ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 115512 **Juneau, Alaska 99811-5512**

SABRINA M. MARTINO, Employee, Claimant, v. ALASKA ASPHALT SERVICES, LLC, Employer, and THE OHIO CASUALTY INSURANCE COMPANY, Insurer, Defendants.	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 202007450 AWCB Decision No. 25-0048 Filed with AWCB Anchorage, Alaska on August 8, 2025

Alaska Asphalt Services, LLC's (Employer) September 26, 2024 petition for a Social Security offset, and Sabrina Martino's (Employee) October 22, 2024 request for a past and ongoing cost of living adjustment (COLA); February 6, 2025 petition to enforce a December 19, 2024 discovery order, and for sanctions, including her April 1, 2025 petition for further sanctions; February 27, 2025 petition to preserve evidence; March 25, 2025 petition for additional time to request a hearing on her January 25, 2022 claim; August 20, 2025 petition to accept her attorney's limited entry of appearance; and May 22, 2025 petition to strike any records for which Employee did not sign a medical record release, were heard on July 16, 2025, in Anchorage, Alaska, a date selected on March 6, 2025. A February 17, 2025 hearing request gave rise to this hearing. Attorney David Graham represented Employee, who testified. Attorney Rebecca Holdiman-Miller represented Employer and its insurer. Attorney Robert Bredesen, who represents himself on his pending claim

for attorney fees and costs, appeared mid-hearing and offered to testify, but ultimately did not participate further. Berni Seever testified for Employer. All participants appeared by Zoom. The record closed at the hearing's conclusion on July 16, 2025.

Preliminary matters:

Objection to a panel member: Employee objected to South-East Panel member Brad Austin participating in this hearing, citing a decision in another case where Austin was a panel member. Employee contended it had no notice that Austin would participate at this hearing and had "concerns" that given a prior opinion in another case, which the Alaska Supreme Court (Court) reversed, Austin made a "bad decision" and may be biased against Graham. Austin stated he could be fair and impartial in this case. Citing 8 AAC 45.106(d), the designated chair as the remaining panel member concluded that Employee produced no evidence demonstrating bias, a conflict-of-interest, or any reason to suspect Austin would have personal or financial gain by participating in this matter. The chair also found that the Court's reversal of a panel member's decision in a different case based on factual or legal mistakes did not constitute a basis to disqualify that panel member from a subsequent case. Moreover, the chair determined that if Austin were disqualified, the hearing would be continued indeterminately because there were no other panel members available to participate. Austin remained on the panel.

Accommodations: Graham also requested frequent breaks or assistance from a staff member under the Americans with Disabilities Act (ADA), citing a recent medical issue. While the chair explained that the panel had no authority to award accommodations under the ADA, which must be approved by the Workers' Compensation Division (Division) Director, the panel would nonetheless grant Graham's requests as a normal, routine courtesy during hearings.

Petition to strike Employer's brief: Employee requested an order striking Employer's brief for two reasons: (1) it referenced two Employer medical evaluators' (EME) reports, to which Employee had filed requests for cross-examination. Since the physicians had not been provided for cross-examination, Employee contended the panel could not consider or rely on their opinions and the brief must be stricken; and (2) it was 10 pages overlength. Employer acknowledged its brief was overlength but asked the panel to accept it, arguing that Employee had "two briefs" on her side,

one from Bredesen and one from Graham. Adding these briefs' page counts together, Employer contended Employee had at least 30 pages, while Employer had only 25. The panel decided that as a party, who had filed his own claim, Bredesen had a right to file a brief. While his brief may support Employee's case, its purpose was to support Bredesen's fee claim, which is dependent in part on Employee's success. After reviewing Employer's brief, the panel determined to strike (*i.e.*, not consider) the brief beginning with the first full paragraph on page 2 and continuing through the end of the first full paragraph on page 12. The panel found this section irrelevant to the issues. Employer asked if the panel would consider exhibits associated with those same pages. The chair stated the panel would consider any exhibit that was relevant to the issues.

ISSUES

The parties have varied views about the first issue. Employee contends she is entitled to a COLA because she moved from Alaska where she was injured to Hawaii where the cost-of-living is higher than it is in Alaska. She contends she is entitled to a higher weekly benefit, in excess of the statutory maximum, and argues that to hold otherwise would violate her constitutional right to travel. Employee cites AS 23.30.175.

Employer agrees that she moved from Alaska to Hawaii, then to Florida and then back to Hawaii. It concedes that she may be entitled to a COLA and would receive different amounts based upon her physical residences. Citing AS 23.30.175(5), Employer argues that her temporary total disability (TTD) rate could never exceed the maximum rate in Alaska. It further contends that it asked Employee to produce evidence of "address changes provided" to the Division and Employer to support her COLA request, with evidence of dates. Employer contends she refused, stating addresses were already in the agency file. It agrees that as soon as Employee provides appropriate evidence it would modify past and future indemnity accordingly. Employer denies liability for interest or penalty on any COLA, and alleges Employee failed to provide any evidence.

Bredesen briefed that with two exceptions he would "refrain from taking positions that will be argued by Martino's current attorney." He did not offer a position on several issues.

1) Shall Employee's request for a COLA be granted?

Employer contends it is entitled to a retroactive and ongoing Social Security offset. It bases this on Employee's Social Security Disability (SSD) award retroactive to May 2021.

Employee contends this panel should not reach this issue as it should dismiss Employer's defenses given alleged discovery abuses. Alternately, an order on this should not occur until all discovery has been completed, because discovery may affect this issue. Further, the panel should not order a retroactive offset. Lastly, Employee argues that 20 CFR 404.408 governs Social Security offsets and preempts Alaska's offset statute.

2) Shall Employer's request for an SSD offset be granted?

Employee contends Employer willfully withheld discovery, and ignored a designee's December 19, 2024 discovery order. She seeks an order "enforcing" the order and imposing dismissal sanctions on Employer under her February 6, 2025 and April 1, 2025 petitions.

Employer contends it has complied fully with the designee's December 19, 2024 discovery order. It seeks an order denying Employee's February 6, 2025 and April 1, 2025 petitions.

3) Shall Employee's February 6, 2025 and April 1, 2025 petitions be denied?

Employee contends that evidence in this case has been lost or destroyed. She seeks an order requiring Employer and its insurer to preserve evidence.

Employer contends it and its insurer have not destroyed any evidence. They seek an order denying Employee's petition.

Bredesen contends Employer's insurer and its adjusters are required to preserve records pursuant to 3 AAC 26.030.

4) Shall Employee's February 27, 2025 petition to preserve evidence be denied?

Employee seeks additional time to request a hearing on her January 25, 2022 permanent total disability (PTD) claim. She contends the claim is not yet ripe because her physicians have not fully diagnosed her work-related conditions and Employer has withheld discovery.

Employer contends Employee missed the deadline to either request a hearing on her January 25, 2022 PTD claim, or ask for more time to request one. Thus, it asks for an order denying the January 25, 2022 PTD claim under AS 23.30.110(c).

Bredesen contends Employee's petition for more time was filed as a "precaution" to preserve the possibility that she could claim benefits back to her injury date. He argues that Employee's PTD claim is not ripe for the same reasons Employee asserted.

5) Shall Employee's March 25, 2025 petition for additional time to request a hearing on her January 25, 2022 claim be denied?

Employee contends she has a right to have her attorney provide limited legal services. Thus, she seeks an order accepting Graham's limited entries of appearance in her case.

Employer contends Graham's two limited appearances use "vague boilerplate language" and do not provide adequate information pursuant to Civil Rules and procedures. It argues that Graham's appearances are unreasonable and cause Employer to incur unnecessary costs by having to pay two attorneys. Employer requests an order denying Graham's limited appearances because it would be difficult to apportion attorney fees following any additional benefit award.

6) Shall Employee's May 8, 2025 petition on limited appearances be granted?

Employee seeks an order striking records from her file for which she did not sign a release.

Employer contends Employee has a PTD claim, which allows broad discovery. It argues it has no control over documents a medical provider sends in response to a release.

7) Shall Employee's May 22, 2025 petition to strike medical records that exceed her medical releases be denied?

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:

1) On June 30, 2020, Employee was reportedly running a "Jumping Jack" compactor when it fell and pulled on her arm and shoulder. (First Report of Injury, September 7, 2020).

2) At the time of her injury, Employee's gross weekly earnings were $1,117.59. This resulted in a $721.06 weekly TTD rate. (Agency file: Wages tab; Division website, Benefit Calculator).

3) On July 7, 2020, the adjuster had Employee's residence address as, "**** West 84th Avenue Unit A, Anchorage AK 99502-5210" [this and all other addresses for Employee will be redacted for privacy]. (Letter, July 7, 2020).

4) On July 14, 2020, Employer's adjuster had Employee's mailing address as, "PO Box 220325, Anchorage, AK, 99522." (Journal Entry, July 14, 2020).

5) On September 14, 2020, Employee advised the adjuster, "I have moved and I am not sure how to proceed. I left state as I am no longer able to maintain my lifestyle as it was. I have moved to Hawaii. . . . My new mailing address is: 16-*** Keaau-Pahoa Rd. Suite ***-269, Keaau, HI 96749." (Email, September 14, 2020).

6) On September 30, 2020, Employee gave the adjuster her address, "16-*** Keaau-Pahoa Rd. Ste .***-676, Keaau, HI 96749." (Email, September 30, 2020).

7) On January 11, 2021, Employee emailed Gina Withrow, Employer's owner, and stated, "I am no longer in Alaska and was wondering if you could send my tax paperwork to: 16-*** Keaau-Pahoa Rd., Ste. ***-676, Keaau, HI 96749." (Email, January 11, 2021).

8) On January 12, 2021, Employee emailed the adjuster stating, ". . . I am still in Hawaii for now and plan on being here at least another week as I got a slight delay getting things ready to move again." (Email, January 12, 2021).

9) On January 12, 2021, the adjuster thanked Employee for the update and stated, "Please let me know what your updated mailing address is when you have it." (Email, January 12, 2021).

10) On January 21, 2021, Employee asked the adjuster, "Can you please forward any mail to *** 89th Ave. N., St. Petersburg, Florida 33702." (Email, January 21, 2021).

11) On January 25, 2021, Employee emailed the adjuster, "My address will be changing again soon. . . ." (Email, January 25, 2021).

12) On January 28, 2021, the insurer asked Employee, "Let me know when your address changes." (Journal Entry, January 28, 2021).

13) On February 2, 2021, Employee emailed the adjuster inquiring if she had sent her anything in the mail. She added, "Person checking my mail in Hawaii said nothing was there too." (Email, February 2, 2021).

14) On February 4, 2021, Employee inquired about a lost check stating, "I had someone checking my Hawaii mail and they had not informed me of receiving it." She asked the adjuster to resend the check to her "new address." (Email, February 4, 2021).

15) On February 10, 2021, the adjuster notified Employee it had updated her mailing address from "*** 89th Ave, N, St. Petersburg, FL, 33702," to, "**** N. Gandy BLVD, #21310, St. Petersburg, Florida, 33702," at her request. (Journal Entry, February 10, 2021).

16) On February 12, 2021, Employer's insurer had, "**** N. Gandy Blvd, #21310 St. Petersburg, FL 33702," as Employee's mailing address. (Journal Entry, February 12, 2021).

17) On February 26, 2021, Sunnita Bonner, who worked for Employer's insurer, made a "Journal Entry" in Employee's file regarding a request to send medical records to "ExamWorks," known to this panel as a company that arranges EMEs for injured workers at insurers' requests. However, this email also references "ormedrecs@examworks.com," with which this panel is not familiar. Part of this document was redacted. (Email, February 26, 2021; experience).

18) On March 1, 2021, Division staff mailed Employee a letter regarding reemployment benefits at an Anchorage PO Box address and also cross-copied it to, "**** N. Gandy Blvd., #21301, St. Petersburg, FL 33702." (Letter, March 1, 2021).

19) On March 3, 2021, Sharona Hlavinka, an earlier adjuster on this case, emailed answers to Employee's questions about a missing check and advised that the address Employer had for her was, "**** N. Gandy Blvd, #21310, St. Petersburg, FL 33702," and asked, "Do you have another address?" There is no response found to this query. (Email, March 3, 2021).

20) On March 4, 2021, Employee partially completed and twice photographed an "Examinee Verification Form," which listed Employee as the examinee and EME Wilbert Pino, MD, as the examiner in "ExamWorks Case # 21323179." The form is dated but not signed. (Examinee Verification Form, March 4, 2021).

21) On March 4, 2021, Employee partially completed and twice photographed a human silhouette form on which she identified pain in her entire left-upper-extremity. Employee's name, address, phone number, date of birth and age were all hand-written on this form. (Welcome to Our Office form, March 4, 2021).

22) On March 4, 2021, Employee completed and twice photographed a form on which she hand-wrote her medical history in response to various questions. This form is also dated but not signed. (Your Medical History form, March 4, 2021).

23) The above March 4, 2021 photographed documents are presumably the "missing" documents discussed at the July 16, 2025 hearing. (Inferences drawn from the above).

24) On March 15, 2021, Employee *pro se* on a form dated March 3, 2021, filed a claim for benefits. The claim listed her "Permanent" address effective "4/5/21" [corrected in box 28 from "3/5/2021" in box 4] as "16-*** Keaau-Pahoa Rd. Ste. ***-676, Keaau, HI 96749," and listed her "Temp" address as, "**** N. Gandy Blvd. # 21310, St. Pete, FL 33702." (Claim for Workers' Compensation Benefits, March 3, 2021). Subsequently, Employee or an attorney on her behalf filed seven more claims for benefits, and each included her Hawaii address, above. (Claim for Workers' Compensation Benefits, August 4, 2021; January 25, 2022; February 13, 2024; March 15, 2024; August 13, 2024; September 13, 2024; and April 1, 2025).

25) On March 22, 2021, Employee emailed the insurer, "I am going back to Hawaii in April. . . ." (Email, March 22, 2021).

26) On March 24, 2021, Employee emailed the insurer, "Please send any correspondence either to my email or Hawaii address from this point forward," and provided her address, "16-*** Keaau-Pahona Rd., STE ***-676, Keaau, HI 96749." (Email, March 24, 2021).

27) On March 25, 2021, the insurer emailed Employee, with a copy to its prior attorney, and said, "We will update your address. Since you filed a [claim] future communication will need to go through Stacey Stone, our attorney. . . ." (Email, March 25, 2021).

28) On July 13, 2021, Employee was getting physical therapy in Hawaii. (Physical Therapy Progress Note, July 13, 2021).

29) On August 4, 2021, Employee's prior attorney Amanda Eklund filed a claim for Employee. The claim listed Employee's address as "16-*** Keaau-Pahona Rd., ***-676, Keaau, HI 96749." (Claim for Workers' Compensation Benefits, August 4, 2021).

30) On September 7, 2021, Stone wrote to Eklund and enclosed 796 pages in response to Eklund's discovery request. Included were all medical records obtained from Joint Base Elmendorf-Richardson (JBER), but Stone's letter said only records related to Employee's claim had been filed on medical summaries. Stone also included all pleadings in Stone's possession. Some other records were redacted. (Letter, September 7, 2021; observations).

31) On January 25, 2022, Bredesen on Employee's behalf claimed TTD, temporary partial (TPD), PTD and permanent partial impairment (PPI) benefits, medical benefits and associated travel costs, a late-payment penalty, interest, "other" including "reemployment" benefits, and attorney fees, and costs. (Claim for Workers' Compensation Benefits, January 25, 2022).

32) On February 3, 2022, Bredesen wrote to Stone stating that he had received from Eklund the records previously provided to her from Employer. Employee requested the following:

> 1. Copies of all employer records documenting the work in injury and/or its reporting. This should include all witness statements and/or statements made by Ms. Martino.
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> 2. Additional adjuster file materials. Specifically, certain items do not appear to have been produced, or were otherwise incomplete:
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> A) Letters and other correspondence with any IME physician(s)
> B) A payment history itemization. I note that an itemization was previously produced (09/27/20 ER discovery production, at Bates #10-13), but it did not include the dates when payments issued, and presumably could also be updated
> C) ISO reports
>
> 3. Complete copies of all employer files kept for Ms. Martino. This includes but is not limited to the personnel file, payroll file, and any medical file. These records should encompass any family or medical leave, for any reason, regardless of medical condition.
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> 4. Names, addresses, phone numbers, and any medical reports reflecting the opinions of all the physicians you or your client have contacted for this client.
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> 5. Complete copies of any file maintained by an IME physician, except copies of the underlying medical records for Ms. Martino which they reviewed. This request covers any intake forms or questionnaires, examination notes, draft reports, notes made during telephone conversations, emails to or from the physician and/or the physician's office, and all other correspondence. Please also include a current CV for each physician.
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> 6. A complete copy of any file maintained by any medical or nurse case management specialist regarding Ms. Martino.
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> 7. A list of all records custodians to whom your office and/or the adjuster served records requests, with the dates of the requests.
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> 8. Copies of all information obtained with any releases signed by Ms. Martino.

> 9. Any documentation showing referral of the claim for fraud investigation. If verbally made, the names of the person(s) to whom the claim was referred.
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> 10. Copies of any and all surveillance video and or investigative reports generated during this claim. This request is ongoing throughout the employee's claim and information of this nature is expected to be received prior to any employee deposition. (Letter, February 3, 2022).

33) On February 15, 2022, Employer denied TTD benefits not supported by medical evidence, not related to the work injury and after medical stability, which date was corrected from previous notices; TPD, PTD and PPI benefits; unreasonable or unnecessary medical benefits and related travel expenses through January 5, 2021; all medical benefits and transportation expenses thereafter; reemployment benefits; a penalty; interest; and attorney fees and costs. Employer added that Employee had been found not eligible for reemployment benefits and had not appealed. Employer certified it had mailed and emailed this notice to Bredesen at his mailing and email addresses. (Controversion Notice, February 15, 2022).

34) Two years from February 16, 2022, the day after Employer emailed its February 15, 2022 controversion to Bredesen, was Tuesday, February 16, 2024, which was not a weekend or legal holiday. (Official notice).

35) On February 21, 2022, Stone emailed Bredesen in response to his letter regarding discovery redactions. She stated pages 115-127 and 218-214 [sic] were redacted under attorney work-product privilege, while pages 153-154 and 158-161 were redacted because they contained information related to insurance reserves. (Stone email, February 21, 2022).

36) On February 22, 2022, Employee filed and served an Affidavit of Readiness for Hearing (ARH) for the following claims: "03/15/21 (penalty), 08/04/20 (interest) & 01/25/22 (.041(k) during eligibility evaluation)." (ARH, February 22, 2022).

37) On May 17, 2022, Employee appeared in person and testified by deposition, held at a court reporter's office in Hilo, Hawaii, as follows:

> Q. And what is your current residence?
> A. I have a different residence than the mailing address. You want my physical address, correct?
> Q. Well, make sure we have both on the record.
> A. Okay. Well, you have my mailing address, obviously. My physical address is 11-**** [redacted for privacy] Punawai Avenue and I believe they consider that Mountain View, and the zip code is 96771.

Q. And how long have you lived at that address?
A. Since October of last year.
Q. And where did you live prior to October 2021?
A. It really depends on the month. Right before that I lived in a little rental in Volcano off of Glenwood Avenue or Street.
Q. And let us do it this way. When did you relocate to Hawaii?
A. I got here April 4 of last year.
Q. And since April 4, having lived anywhere other than the Big Island?
A. No.
Q. And prior to April 4, where were you living?
A. I was in Florida.
Q. And how long did you reside in Florida?
A. I was there about three months, maybe two-and-a-half-months.
Q. And prior to living in Florida, where were you living?
A. I was here on the Big Island.
Q. And how long did you live on the Big Island prior to going to Florida?
A. About five months.
Q. Okay. And then where did you live prior to moving to the Big Island?
A. In Anchorage, Alaska.
Q. And how long did you reside in Anchorage, Alaska?
A. For 18 years, just shy of 18 years.
Q. And what was your reason for leaving Anchorage, Alaska?
A. Sold my home and I wanted to try new things. I was no longer making the money that I had coming in and I had a triplex. There was eviction moratoriums and I did not want to lose my house and my credit so I sold and got out.
. . . .

Q. Have you ever applied for welfare or other state aid benefits?
A. I had a social worker with the VA trying to help me get signed up for SNAP, and I just recently did file for disability. I have some paperwork I need to get in, and I am awaiting a phone call.
Q. And when you say you file for disability. You are referencing Social Security disability?
A. Yes.
Q. And you have not received any determination back yet, if I understood your testimony correctly; is that correct?
A. That is correct, yes.
Q. And when did you complete that application?
A. I did the on-line application about a week ago, two weeks ago. . . . (Videoconference Deposition of Sabrina M. Martino, May 17, 2022, at 7-9).

38) On June 20, 2022, Employee filed and served an ARH for the following claims: "03/15/21 and 01/25/22 (attorney fees and costs)." (ARH, June 20, 2022).

39) On July 25, 2022, Employee completed under oath a financial statement for the Alaska Workers' Compensation Appeals Commission (Commission). In it, Employee stated she was

receiving Veterans Administration (VA) disability benefits at $1,214.03 per month. (Financial Statement Affidavit, July 25, 2022).

40) On December 28, 2022, Employee filed and served an ARH for claims: "03/15/2[1], 08/04/21 and 01/25/22 (all benefits except PPI)." (ARH, December 28, 2022).

41) On December 29, 2022, Bredesen wrote to Stone stating he did not receive responses to his discovery request sent on February 3, 2022. He acknowledged having received Employer's responses to Eklund on September 7, 2021, and asked that his request be considered a supplementation request. (Letter, December 29, 2022).

42) On January 30, 2023, Stone responded to Employee's December 29, 2022 discovery request and summarized Employer's discovery responses to date: On September 7, 2021, Employer sent Eklund 796 pages of discovery; and on February 3, 2022, Bredesen received from Eklund the same 796 pages; Stone responded to Bredesen's February 15, 2022 request on February 21, 2022; and Employer responded to his current December 29, 2022 supplementation request:

> 1. Copies of all employer records documenting the work injury and/or its reporting.
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> Employer's response: See Bates stamped records RFP 000797, RFP 000810, RFP 000812, RFP 000815-RFP 000817, and RFP 000829.
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> 2. Additional adjuster file materials. Specifically, certain items do not appear to have been produced, or were otherwise incomplete:
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> A) Letters and other correspondence with any IME physician(s).
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> B) A payment history itemization. I note that an itemization was previously produced (09/27/2020 ER discovery production, at Bates No. 10-13), but it did not include the dates when payments were issued and presumably could also be updated.
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> C) ISO reports.
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> Employer's response:
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> A) Chris Vecillio of Premier Medical currently assists Wilbert Pino, MD, in scheduling and managing independent medical evaluations. My assistant spoke with Chris Vecillio on January 26, 2023, and requested a copy of Dr. Pino's file materials in this matter. Mr. Vecillio advised that if Dr. Pino made handwritten notations at the time of the employee's independent medical evaluation, the information contained in his notations was

incorporated into his final report. Therefore, no notations from the evaluation were retained. Additionally, Dr. Pino does not require his examinees to complete intake forms prior to his examinations. Further, because there had been no activity requiring Dr. Pino's involvement since March 4, 2021, records have been discarded.

B) Payment logs, which include issuance dates, have been requested and will be produced upon receipt.

C) ISO reports were previously produced and can be found at Bates numbers RFP 128-147 and RFP 203-217.

3. Complete copies of all employer files kept for Ms. Martino. This includes but is not limited to the personnel file, payroll file and medical file. These records should encompass any family or medical leave for any reason, regardless of medical condition.

Employer's response: Please see response above to request number one stamped RFP 000797 to RFP 000831.

4. Names, addresses, phone numbers, and any medical reports reflecting the opinions of all the physicians you or your client have contacted for this client.

Employer's response: All medical records secured by the employer have been filed by means of Board-required medical summaries. The employee can obtain contact information for those entities in the filed medical records.

5. Complete copies of any file maintained by an IME physician, except copies of the underlying medical records for Ms. Martino which they reviewed. This request covers any intake forms or questionnaires, examination notes, draft reports, notes made during telephone conversations, emails to or from the physician and/or the physician's office, and all other correspondence. Please include a CV for each physician.

Employer's response: See employer's response to No. 2, A. Additionally, a CV for Wilbert Pino, MD, has been requested and will be produced upon receipt.

6. A complete copy of any file maintained by any medical or nurse case management specialist regarding Ms. Martino.

Employer's response: See records Bates stamped RFP 000832-RFP 000836.

7. A list of all records custodians to whom your office and/or the adjuster served records requests, with the dates of requests.

> Employer's response: Objection, work product. Without waiving said objection, as required, all medical records, specific to the employee's claimed conditions, have been filed by means of Board-required medical summary.
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> 8. Copies of all information obtained with any releases signed by Ms. Martino.
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> Employer's response: Objection, work product. Without waiving said objection, as required, all medical records, specific to the employee's claimed conditions, have been filed by means of Board-required medical summary.
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> 9. Any documentation showing referral of the claim for fraud investigation. If verbally made, the names of the person(s) to whom the claim was referred.
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> Employer's response: The employer is unaware of any referral for fraud investigation in this matter.
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> 10. Copies of any and all surveillance video or investigative reports generated during this claim.
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> Employer's response: Objection, relevance, attorney work product, attorney-client privilege. *See Langdon v. Champion*. Without waiving said objections, see previously produced investigation reports, stamped RFP 167 to RFP 202. (Letter, January 30, 2023).

43) On April 21, 2023, Employee swore under oath her residence address was "11-**** Puna Wai Av., Mountain View, HI 96771." (Financial Statement Affidavit, April 21, 2023).

44) On May 16, 2023, the parties appeared before a Board designee and identified issues for a June 29, 2023 merits hearing. PTD benefits were not included as an issue scheduled for hearing. (Prehearing Conference Summary, May 16, 2023).

45) On August 10, 2023, *Martino v. Alaska Asphalt Services, LLC,* AWCB Dec. No. 0044 (August 10, 2023) (*Martino IV*) decided all issues set for hearing from Employee's January 25, 2022 claim and determined: (1) an oral order denying Employer's request to continue the hearing was correct; (2) Employee's claim was not barred for failure to give timely notice; (3) her left shoulder, left cervical spine and left thoracic outlet syndrome (TOS) are compensable injuries; (4) Employee was not entitled to TPD benefits, but was entitled to TTD benefits; (5) she was entitled to interest on past-due benefits, and a late-payment penalty on TTD benefits owed beginning July 30, 2021, and continuing through the date Employer paid past benefits; (6) Employee was entitled to full, reasonable actual attorney fees for work done prior to the hearing, and ongoing statutory

minimum attorney fees. As PTD benefits were not an issue scheduled for hearing, *Martino IV* did not address them. (*Martino IV*).

46) On February 13, 2024, Employee filed and served an ARH on the following claim: "01/25/22 (PTD)." (ARH, February 13, 2024).

47) On March 7, 2024, Stone, Bredesen and Employee attended a prehearing conference before a Board designee. Under "Discussions," the designee stated, "Employee representative advised that the 2/13/2024 WCC [Workers' Compensation Claim] was filed to preserve the statute of limitations on Employee's PTD claim. Employee representative also noted that the PTD claim is not yet ripe for Hearing as discovery is ongoing. Holding Employee's 2/13/2024 ARH in abeyance. Parties advised that [they] will request another prehearing conference when/if necessary." There is no objection recorded from Employer to the designee's above-quoted actions. (Prehearing Conference Summary, March 7, 2024).

48) On May 13, 2024, the Social Security Administration (SSA) sent Employee a letter advising she was entitled to monthly SSD benefits beginning May 2021. Her initial entitlement was $1,718 per month. The SSA found she became disabled under its rules on July 7, 2020, and her "past-due" benefits were $65,742 for May 2021 through March 2024. The SSA withheld $7,200 from her past benefits to pay her attorney. (Notice of Award, May 13, 2024).

49) In August 2024, the County of Hawaii sent Employee a 2024-2025 real property tax bill to a Hawaii mailing address different from the Hawaii address redacted in the above factual findings. However, the "property address" on which the tax was levied is the same address. (County of Hawaii, 2024-2025 Real Property Tax Bill, undated).

50) On September 13, 2024, Bredesen wrote to Holdiman-Miller and noted the insurer had never paid Employee COLA. He also mentioned that Employee was "recently awarded" SSD benefits, and a copy of the award letter would be filed with the Division. Bredesen added:

> As you are aware, Ms. Martino moved from Alaska to Hawaii, then to Florida, then back to Hawaii. Because of the COLA adjustment, she should have been paid different amounts while residing in each state. Next, the COLA adjustment for Hawaii increased on January 1, 2023 from 145.6 to 151.88. Additionally, her Social Security was awarded retroactive to May 2021, at a monthly rate of $1,718. Putting that all together results in the following entitlement schedule, with resulting overpayments and underpayments:
>
> <u>07/06/20 – 09/05/20</u> (no weekly overpayment or underpayment)

- Date of injury until she moved to Hawaii
- Compensation rate is $721.06 per week

09/06/20 – 01/21/21 ($328.80 per week underpayment)
- Her first period of time in Hawaii
- COLA of 1.456 raises multiplied by the compensation rate equals $1,049.86

01/22/21 – 04/03/21 ($228.43 per week overpayment)
- Her time in Florida
- COLA of .6832 (St. Petersburg) multiplied by compensation rate equals $492.63

04/04/21 – 04/30/21 ($328.80 per week underpayment)
- Returns to Hawaii and there were about four weeks before her SSD entitlement initiated COLA of 1.456 multiplied by compensation rate $1,049.86.

05/01/21 – 12/31/22 ($3.46 per week underpayment)
- This is time when her SSD began
- SSD initiated at $1,718 per month, reducing weekly payments to $497.61.
- COLA of 145.6 multiplied by $497.61 equals $724.52.

01/01/23 – present ($69.15 per week underpayment)
- COLA for Hawaii increases to 1.5188.
- COLA of 1.5188 multiplied by $497.61 equals $790.21

We ask that you review the chronology above and let us know if you disagree with any aspect of it. If we agree on the dates and weekly amounts, then a calculation of the net underpayment, interest and penalty should be relatively straightforward. . . . (Letter, September 13, 2024).

51) On September 17, 2024, Thomas Rosenbaum, MD, neurosurgeon, saw Employee for an EME. The medical records he reviewed are listed in his 21 page report. (Rosenbaum report, September 17, 2024).

52) On September 26, 2024, Employer requested a Social Security offset under AS 23.30.225(b) and 8 AAC 45.225(b). The only attachment was the SSA's May 13, 2024 "Notice of Award" letter. (Petition, September 26, 2024).

53) On September 27, 2024, Bredesen wrote to Holdiman-Miller asking her to:

(1) Please supplement the prior responses to my informal discovery requests dated February 3, 2022.
(2) A payment itemization for all payments made on this claim.
(3) Please explain why the following medical studies and/or treatments, requested by Vally Medical, have not been authorized:

> a. Routine follow-up visit with her physician. I note that the provider indicated that the adjuster would only authorize a follow-up after the cervical MRI. This meant that Ms. Martino was unable to get her prescriptions refilled prior to the EME trip to Oregon.
> b. Thoracic MRI
> c. Shoulder MRI
> d. Acupuncture therapy
> e. Massage therapy
> f. Physical therapy
>
> (4) Have medical records arrived for Ms. Martino's April 16-20 trip? If so, when were they received? Please also file the records on an appropriate Medical Summary.
>
> (5) Have medical records arrived for Ms. Martino's April 25-27 trip? If so, when were they received? Please also file the records on an appropriate Medical Summary.
>
> (6) Which physician does Employer/Insurer consider to be the nearest point where adequate services to treat her cervical spine?
>
> (7) Which physician does Employer/Insurer consider to be the nearest point where adequate services to treat her TOS [thoracic outlet syndrome] condition?
>
> (8) Please provide copies of all communications regarding the recent EME appointment and the appoint that had been scheduled prior to it. This should encompass all communications in any form, electronic, paper, etc. It should encompass communications with the EME physician himself, as well as any company that may have facilitated the appointment (*i.e.*, ExamWorks, etc.). This request also encompasses all communications by any person connected with claim, including the employer, insurer, your firm, etc. finally, it encompasses all communications with the individual who accompanied Ms. Martino during the trip, as well as the company she worked for. (Letter, September 27, 2024).

54) On September 27, 2024, Employee also petitioned to compel discovery. Attached was the above-cited September 27, 2024 letter to Holdiman-Miller and other documents indicating that the discovery pertained primarily to discovering information that would lead to Employee obtaining medical care. Also attached was a memorandum for the prehearing conference designee's use in ruling on the discovery petition. (Petition, September 27, 2024).

55) Employee's September 27, 2024 memorandum identified her "most urgent requests" for discovery, with a request for an order requiring Employer to respond within 30 days with one exception: (1) identify the nearest point for adequate medical treatment for possible neck surgery

and for TOS treatment, within 48 hours; (2) identify the factual basis for Employer's "controversion" of treatment at Vally Medical; (3) provide a current payment itemization; (4) state whether Employer has records not filed on a Medical Summary; and (5) provide records pertaining to an August 2024 EME trip where Employee was accompanied by Employer's agent. (Employee's Memorandum in Support of Petition to Compel, September 27, 2024).

56) On October 16, 2024, Employee requested cross-examination on Dr. Rosenbaum's September 17, 2024 EME report. (Smallwood Objection, October 16, 2024).

57) On October 28, 2024, Employer asked Employee to "produce evidence of address changes provided to the Board and employer, which support the COLA claim, along with evidence of the [her] addresses over the years that support the COLA claim." It added "produce evidence of the current property you identify as your primary living residence and verify physical location/address of the same." (Informal Discovery Request to Employee, October 28, 2024).

58) On October 28, 2024, Employer through Holdiman-Miller wrote to Bredesen and provided additional medical records that it would file that day on medical summaries in response to Employee's supplemental request for discovery. It also attached a spreadsheet containing additional paid-to-date amounts and said it would continue to identify documents and information responsive to his request as soon as possible. (Letter, October 28, 2024).

59) On November 14, 2024, the parties appeared before a Board designee. While discussing Employee's September 27, 2024 petition to compel, Employer orally responded to her request (3) and stated that the Act does not require her client to preauthorize treatment, but its understanding was that the adjuster did not refuse to authorize MRIs, acupuncture, massage or medical appointments for Employee at Vally Medical. As for Employee's request (6), Employer stated it considered Jeffrey Roh, MD, [or, perhaps Rowe as stated elsewhere] to be the nearest physician to treat Employee's cervical spine. Employer also stated it was no longer requiring Employee to travel outside Hawaii for EMEs, and as such an Oregon EME scheduled for November 21, 2024, had been canceled. (Prehearing Conference Summary, November 14, 2024).

60) On December 16, 2024, Bredesen filed documents upon which he intended to rely at hearing. Included were Employer's discovery responses from October 28, 2024, October 29, 2024 and November 14, 2024, which included: Holdiman-Miller's October 28, 2024 letter to Bredesen with approximately 20 pages of medical records; a medical payment spreadsheet spanning July 8, 2020 through August 16, 2024; various University of California, Los Angeles (UCLA) medical records

from April 2024; several Hawaii treatment plans; a spreadsheet showing payments to Employee spanning from July 3, 2020 through November 9, 2024; a November 14, 2024 email from Holdiman-Miller to Bredesen addressing issues for a prehearing conference scheduled for that date, which included a statement that all medical records received to date had been "paid" and placed on medical summaries; and several emails regarding Employee's expected travel to Portland in September 2024. There were no redactions to any documents attached to this notice. (Notice of Intent to Rely, December 16, 2024).

61) On December 17, 2024, Bredesen wrote to Holdiman-Miller regarding discovery: (1) Employee requested responses to Bredesen's September 27, 2024 informal discovery requests. She contended Employer's response had been "meager," and Employee had "not received anything." Employee demanded a privilege log "as initially requested in February 2022" spanning all withheld or redacted documents or information from the claim's inception; (2) Employee also faulted recently-provided itemized spreadsheets noting they did not include information regarding when payments had been made. She demanded a complete response; (3) Employee wanted an explanation if Employer had any factual basis to deny authorization for treatment at Vally Medical Center, and alleged such authorization was not forthcoming; (4) she understood request (4) had been completed; (5) Employee demanded Employer file medical records for her April 25-27 trip on medical summaries, noting that Employer's itemization indicated the bill had been paid and the adjuster would not have paid it without medical records; (6) her understanding that Employer had responded to (6) at the November 14, 2024 prehearing conference so it was resolved; (7) Employee demanded Employer state what physician it considered to be the nearest point with adequate services to treat her TOS; and (8) she wanted all communications regarding the recent EME appointment and the one prior. Her demand included any communications with the individual who accompanied Employee during her trip and the company for which that person worked. She contended only a single email from a travel agent had been produced:

> Nothing has been provided in terms of communications, invoices, etc. with the EME physicians. In addition, I would like to schedule the deposition of the travel companion, to be conducted as a records deposition as well. . . .

In short, Employee wanted the designee to order Employer to fully respond to requests "#1-3, 5, and 7-8 no later than January 3, 2025," and provide a privilege log by January 17, 2025. (Employee's Memorandum in Support of Petition to Compel, December 18, 2024).

62) On December 19, 2024, Employee, Bredesen and Holdiman-Miller appeared at a prehearing conference before a Board designee. They stipulated to an oral hearing on February 12, 2025, on Employee's claims' merits. Employer's September 26, 2024 petition for an SSD offset was added as an issue for that hearing. Employee requested a discovery order on her September 30, 2024 petition to compel and related December 18, 2024 memo. She also demanded a privilege log explaining any and all withheld documents or redactions, and Employer's responses to questions "1-3, 5, & 7-8" as stated in the September 30, 2024 petition. Employer stated it had responded to Employee's September 30, 2024 petition and requested time to respond to the related memo until December 23, 2024. Employee contended that Employer's production had been "minimal," and did not address all topics. The parties discussed a May 8, 2024 visit Employee had with UCLA and Employee stated the resultant records had not been filed on a Medical Summary. Employer stated it was currently attempting to locate those records and would be filing them on a Medical Summary. (Prehearing Conference Summary, December 19, 2024).

63) At the December 19, 2024 prehearing conference, the designee also reviewed Employee's September 30, 2024 petition to compel and memo, and determined items "4 and 6" were no longer at issue. Therefore, the designee listed remaining requests as follows:

> (1) Please supplement the prior responses to my informal discovery requests dated February 3, 2022.
>
> (2) A payment itemization for all payments made on this claim.
>
> (3) Please explain why the following medical studies and/or treatments, requested by Vally Medical, have not been authorized:
>
> a. Routine follow-up visit with her physician. I note that the provider indicated that the adjuster would only authorize a follow-up after the cervical MRI. This meant that Ms. Martino was unable to get her prescriptions refilled prior to the EME trip to Oregon.
> b. Thoracic MRI
> c. Shoulder MRI
> d. Acupuncture therapy
> e. Massage therapy
> f. Physical therapy
>
> (5) Have medical records arrived for Ms. Martino's April 25-27 trip? If so, when were they received? Please also file the records on an appropriate Medical Summary.

> (7) Which physician does Employer/Insurer consider to be the nearest point where adequate services to treat her TOS condition?
>
> (8) Please provide copies of all communications regarding the recent EME appointment and the appoint that had been scheduled prior to it. This should encompass all communications in any form, electronic, paper, etc. It should encompass communications with the EME physician himself, as well as any company that may have facilitated the appointment (*i.e.*, ExamWorks, etc.). This request also encompasses all communications by any person connected with claim, including the employer, insurer, your firm, etc. finally, it encompasses all communications with the individual who accompanied Ms. Martino during the trip, as well as the company she worked for.

The designee found these requests "reasonable, relevant, and likely to lead to discoverable information." Thus, he granted Employee's September 30, 2024 petition without further analysis. However, the summary implied, by citing an analysis, that the designee had applied a two-step analysis to determine that the above-referenced requests were discoverable. He ordered Employer to respond to the requests by January 3, 2025, and supply the requested Privilege Log by January 17, 2025. The conference summary plainly advised all parties that they had 10 days to appeal the designee's discovery order. (Prehearing Conference Summary, December 19, 2024).

64) Employee's agency file contains no evidence that any party appealed the designee's December 19, 2024 prehearing conference discovery order. (Agency file).

65) On December 23, 2024, well after the designee had issued his December 19, 2024 discovery order, Employer apparently responded to Employee's September 30, 2024 petition to compel discovery (and expressly to Bredesen's related September 17, 2024 letter):

> (1) The February 2022 discovery request was resolved when the prior D&Os were issued. The discovery issues were relative to a decided WCC and any pursuit now is untimely. Furthermore, the parties stipulated that the only required discovery post-D&O was a yearly accounting of the benefits paid for the agreed upon yearly attorney fee payment. See Attached D&Os and Stipulation. Exhibit 1. Thus, the employer takes the position the pre-D&O discovery request is moot and the employee has no standing to assert a response now based on a new WCC with new issues.
>
> a) Notwithstanding, the employer answered the petition showing how over 800 pages were already produced per the January 2023 response. See Answer to Petition to compel. Exhibit 2.

b) The current issues per the September 2024 WCC are medical costs, transportation costs, unfair controvert, penalty, interest, attorney fees/costs, past/ongoing COLA, and SS offset petition. Exhibit 3. (WCC and most recent prehearing summary).

c) All documents relevant to the current hearing issues from the 2024 WCC have been provided and will continue to be supplemented as benefits continue to be paid without controversion. See Attached documents produced to date since September 2024. Exhibit 4.

d) The employer specifically answered all items in the discovery request again on November 14, 2024. At the prehearing on this date it was noted only #3 and #6 were still at issue, which were also verbally responded to as noted in the summary. See Email dated 11/14/24 and PHC summary from PHC on this date. Exhibit 5.

(2) Payment information has been provided and will be supplemented as benefit payments continue without controversion. See Exhibit 3. Further information can be obtained from the Board as the payments are deposited and provided via EDI. Furthermore, TTD payments are not a present issue.
(3) This was answered per the November 14, 2024, PHC summary and Exhibit 4 that demonstrates preauthorization via form despite no requirement. Exhibit 6.
(4) All medical records received to date have been placed on the employer's medical summaries.
(5) This was answered at the 11/14/24 PHC due to the local neurosurgeon referral information in the medical records. The employee was referred to UCLA for medical treatment and the employer previously reimbursed the UCLA medical travel costs without issue. If there is no local neurosurgeon option for the cervical condition, then the current referral to UCLA would remain appropriate.
(6) The employer previously paid for the referred UCLA testing, treatment, and travel. If the locally designated physician locates a local TOS provider the local referral would be the nearest.
(7) This information has been provided other than privileged documentation. See Exhibit 4. There is no claim for disability, and TTD and medical benefits continue without controversion. Thus, any additional information and/or deposition of the medical concierge is not relevant or necessary to address the current claim issues. (Answer to Employee's Discovery Letter Dated 12/17/24, December 23, 2024).

66) On December 30, 2024, Employee responded to Employer's October 28, 2024 discovery requests. Relevant to the instant matter, she stated:

Request No. 4: Please provide a detailed list of all evidence you believed to be missing to date after the supplemental discovery is received.

> **Answer:** Please refer to the Order to Compel dated December 19, 2024, as well as all correspondence and pleadings incident to it.
>
> **Request No. 5**: Please produce evidence of address changes provided to the Board and employer, which support the COLA claim, along with evidence of the employee's addresses over the years that support the COLA claim.
>
> **Answer**: Objection, all filings with the Board were previously copied to the employer and need not be re-produced. Please also refer [to] the adjuster notes as well as all checks mailed to myself. Please further refer to the employer's 90-day notice, my request for an eligibility evaluation, all correspondence from the RBA [Rehabilitation Benefits Administrator] as well as all eligibility evaluation reports. In addition, enclosed is a 2024 real property tax bill.
>
> **Request No. 6**: Please produce evidence of the current property you identify as your primary living residence and verify physical location/address of same.
>
> **Answer**: See above. (Letter, December 30, 2024, with attachment).

Employee attached the County of Hawaii 2024-2025 Real Property Tax Bill. This document includes what appears to be Employee's mailing address as well as the "property address," which is "11-**** Puna Wai Avenue." (Attachment to letter, December 30, 2024).

67) On January 3, 2025, Employer provided Employee with additional discovery in response to the designee's December 19, 2024 prehearing conference discovery order:

> One: Please supplement the prior responses to my (employee's) informal discovery requests dated February 3, 2022.
>
> Responses to the employee's discovery request dated February 3, 2022, have been previously produced and are further supplemented in this response.
>
> Two: A payment itemization for all payments made on this claim.
>
> Previously provided and supplemented with this response.
>
> Three: Please explain why the following medical studies and/or treatments requested by Valley Medical, have not been authorized:
>
> a) Routine follow-up visits with her physician.
> b) Thoracic MRI
> c) Shoulder MRI
> d) Acupuncture therapy
> e) Massage therapy
> f) Physical Therapy

> Previously answered. Also see supplemented records attached.
>
> Five: Have medical records arrived for Ms. Martino's April 25-27 trip? If so, when were they received? Please also file the records on an appropriate medical summary.
>
> Yes, these records were received and filed on medical summaries.
>
> Seven: Which physician does Employer/Insurer consider to be the nearest point to obtain adequate services for her TOS condition?
>
> Previously answered.
>
> Eight: Please provide copies of all communications regarding the recent EME appointment and the appointment that had been scheduled prior to it.
>
> Previously provided and one additional email supplemented with this response.

Employer attached Bates-stamped documents 000864-000901 to its letter. The attachments included: A spreadsheet showing payments to Employee and medical providers beginning July 3, 2020 through January 18, 2025; a separate spreadsheet showing payments made to medical providers beginning July 8, 2020 through December 18, 2024; an October 8, 2024 email from Ryan Longhorn to the adjuster regarding Employee's travel presumably during her EME; numerous Hawaii Workers' Compensation Treatment Plans dated July 24, 2024, and August 2, 2024, either approving fully or approving in-part various treatment, signed by the adjuster; a California Request for Authorization dated March 7, 2024, approving a request, signed by the adjuster; numerous medical records and related fax cover sheets; a California Request for Authorization dated May 1, 2024, approved and signed by the adjuster; additional medical records with related fax cover sheets; and a December 18, 2023 letter from the adjuster to UCLA reconfirming an initial pre-authorization for treatment previously provided on December 7, 2023. (Letter, January 3, 2025, with attachments).

68) On January 21, 2025, Lynne Bell, MD, PhD, performed a medical record review EME. Records Dr. Bell reviewed are listed in her 42-page report. (Bell report, January 21, 2025).

69) On January 23, 2025, Employee filed notice that she intended to rely on numerous documents at hearing. Pertinent to the matters being decided in this decision, relevant attachments included: Employee's July 25, 2022 Financial Statement Affidavit before the Commission; a

payment spreadsheet to providers and Employee spanning from July 3, 2020 through January 5, 2025, showing everything except the payments' dates; a separate payment spreadsheet limited to medical providers showing everything including payments' dates; an email between Seever and a representative of the company that provided a travel companion for Employee during her September 2024 trip; and Holdiman-Miller's January 3, 2025 letter to Bredesen providing additional discovery responses. (Notice of Intent to Rely, January 23, 2025).

70) On January 23, 2025, Holdiman-Miller advised Bredesen that "we have not sought opinions from her treating medical providers." She continued, "We have only sought information regarding appointments, possible testimony/deposition dates, referrals, treatment status, fee schedule acceptance/payments, medical records and billings, etc. to try and determine if more is needed on either end for her treatment." (Email, January 23, 2025).

71) On January 23, 2025, Holdiman-Miller's paralegal Felicia Cassel, provided an affidavit stating her duties included "contacting medical providers via letters, emails, and telephone to obtain medical records, bills, confirm dates of treatment, and assist with scheduling depositions." Her contact with medical providers and their facilities do not exceed these tasks. (Affidavit of Felicia Cassel, January 23, 2025).

72) On January 24, 2025, Holdiman-Miller sent Bredesen Employer's Privilege Log I. The log spanned from November 1, 2019 through March 2021, and identified documents by Bates-stamp, date and a brief description. It included the asserted "attorney-client privilege," and other objections including Employer's position that the information was not reasonably calculated to lead to admissible evidence. Employer noted that some Bates-stamped documents were "blank." (Letter, January 24, 2025).

73) On February 3, 2025, Employee requested cross-examination of Dr. Bell's January 21, 2025 report. (Smallwood Objection, February 3, 2025).

74) On February 6, 2025, Employee petitioned, "To enforce 12/19/24 discovery order, which Employer has not complied with, and impose sanctions." (Petition, February 6, 2025).

75) On February 10, 2025, Bredesen withdrew as Employee's attorney. (Notice of Withdrawal, February 10, 2025).

76) On February 10, 2025, Bredesen on his own behalf filed his claim for attorney fees and costs. (Claim for Workers' Compensation Benefits, February 10, 2025).

77) On February 10, 2025, Bredesen filed a petition for an order joining Employee as a party to his claim, under 8 AAC 45.040(a). (Petition, February 10, 2025).

78) On February 14, 2025, Bredesen wrote to Holdiman-Miller to explain with a chart where discovery requests and responses could be found "scattered throughout" the record. He also set forth his position regarding Employer's alleged failure to respond to discovery requests. He alleged, "In short, almost nothing since September 2021 has been produced." This included adjuster's notes, which would include entries for voicemail messages left and received by the adjuster, emails, authorizations for medical treatment and all actions taken on the claim. Bredesen also alleged that no explanation of benefits had been produced documenting what was billed and what was paid. He noted nothing was produced regarding the recent EME evaluations with Oregon Medical Evaluations, Inc., and Employer and its agents did not disclose any in-person, telephonic or Internet conferences with these physicians, drafts reports or any invoices. Bredesen contended that payment information was incomplete and he requested payments to EME physicians, nurse case managers, private investigators and so forth. He noted, "Nothing has been produced regarding the possibility that Liberty Mutual may have had . . . an in-house physician review the file, as had happened prior to September 2021**."** Bredesen contended that these responses prohibited Employee from evaluating the file properly. He also sought additional private investigator or surveillance materials. He asserted that "several thousand pages of documents" had been withheld without any basis or timely assertion of a privilege. He noted that the privilege log stopped in September 2021. (Letter, February 14, 2025).

79) On February 27, 2025, Employee, *pro se*, filed her own petition dated February 26, 2025, seeking "file preservation of evidence to prevent deletion or discarding." There was no other explanation. (Petition February 26, 2025).

80) On March 6, 2025, Employee, Bredesen and Holdiman-Miller appeared before a Board designee. The designee scheduled an oral hearing for June 24, 2025, on issues that ultimately changed at the June 17, 2025 prehearing conference. (Prehearing Conference Summaries, March 6, 2025; June 17, 2025).

81) On March 25, 2025, Employee *pro se* filed her own petition requesting "other" relief, which she described as "additional time to request a hearing on the claim dated January 25, 2022" and "additional time for hearing." (Petition, March 25, 2025).

82) On March 26, 2025, Bredesen on his own behalf answered Employee's March 21, 2025 petition. He agreed it had merit. (1) Bredesen argued that only parts of the January 2022 claim were heard and decided, and "the need to request a hearing has already been satisfied." (2) He further contended that the deadline to request a hearing had not yet run because the SIME process tolled the two-year statute. He cited *Roberge* as support. (3) Bredesen argued that Employee had not been able to have her injuries fully diagnosed because Employer's insurer had engaged in bad faith delays. He contended additional time to develop the remaining claims was "fully justified." (Attorney's Answer to Employee's 03/21/25 petition, March 26, 2025).

83) On April 1, 2025, Employee *pro se* filed her own March 31, 2025 petition requesting "other" relief. On her cover email, Employee stated in relevant part, "But I wanted to assert what I believe are my rights contained in the 12/19/2024 discovery order." Specifically she requested in her petition "adverse inference or other applicable sanctions." Employee added:

> For Board to consider adverse inference or other sanctions it deems appropriate under AS 23.30.108(c), 8 AAC 45.095, AS 23.30.155, AS 23.30.095 and any other relief the Board deems just." (Email; Petition, March 31, 2025).

Later that same day, Employee filed an amended March 31, 2025 petition to change her request from "or" to "and/or." (Email; Petition, March 31, 2025).

84) On April 1, 2025, Employee *pro se* filed and served a document she called an "Answer," dated March 31, 2025, to clarify or explain her petition to preserve evidence:

> I respectfully request the board encourage the employer to provide written confirmation that all documents, including, but not limited to adjuster notes, nurse case manager files, communications with EME providers (all communications in any form including any company that may have facilitated the appointment or any person connected with the claim) in house physician reviews, third party investigative materials, surveillance, payment histories (including dates paid), adjuster notes, EOBs, [and] intake records are preserved in their original form and will remain so for at least seven (7) years or for the duration of any statutory period during which the employer or insurer may have an interest in reopening, modifying or appealing the claim, whichever is longer.
>
> This measure will promote procedural integrity, preserve the evidentiary record and ensure fairness for all parties going forward. (Employee's Answer to Employer's Opposition of Preservation of Evidence, March 31, 2025).

85) On April 14, 2025, Employer responded to Employee's March 25, 2025 request for more time to request a hearing on her January 25, 2022 claim. It contended that the Board heard and decided issues from that claim on June 29, 2023, and resolved those issues in *Martino IV*. It contended *res judicata* prevented parties from relitigating the same issues, and since all benefits awarded in *Martino IV* continued, "the request for an extension is unwarranted and baseless." (Opposition to Employee's Extension to Request a Hearing, April 14, 2025).

86) On April 16, 2025, Employee, Bredesen and Holdiman-Miller appeared telephonically before a Board designee. The designee questioned Bredesen's presence since he had withdrawn as Employee's attorney, and Employer objected to his presence:

> Mr. Bredesen and Ms. Martino verified the 2/11/2025 Petition to add Robert Bredesen as a party to this case and advised that the intent is for Mr. Bredesen to attend prehearing conferences to listen in and coordinate scheduling in his interest due to the 2/10/2025 Attorney Lien. Ms. Miller objected to Mr. Breden's attendance per the 2/10/2025 withdrawal. Mr. Bredesen listened in and did not make arguments for or provide legal advice to Ms. Martino during today's prehearing.

The issues listed for the June 24, 2025 hearing ultimately changed at the June 17, 2025 prehearing conference. (Prehearing Conference Summaries, April 16, 2025; June 17, 2025).

87) On April 16, 2025, Employee filed and served on Bredesen and Holdiman-Miller a consent to receive electronic service; she provided her email address. (Agency file: Judicial, Communications, Change of Contact Info tabs, April 16, 2025).

88) On May 8, 2025, Graham entered a limited appearance on Employee's behalf. He is an attorney licensed to practice law in Alaska. He stated:

> The subject matter, limitations, and material terms of this limited entry of appearance are as follows.
>
> 1. The scope of the representation is limited to the above captioned case.
> 2. Except as modified by the material terms below, the legal services that the Graham Law Firm will provide within the scope of this representation is limited to the following:
>
> a) Providing the Employee with case evaluation and recommended strategies;
> b) Providing the Employee with general guidance as to the law, procedure, resources and rules;
> c) Providing the Employee with legal advice, guidance, and legal opinions;

> d) Providing the Employee with an overview, analysis, and recommended action with respect to medical reports, pleadings, and orders;
> e) Providing the Employee with guidance on communicating with the Alaska Workers' Compensation Board, including the drafting of pleadings and participation in such proceedings as may be appropriate; and
> f) Providing the Employee with settlement advice.
>
> 3. The material terms of this representation are as follows:
>
> a. The Graham Law Firm will provide full representation on the claims for legal costs of the Graham Law Firm to which the Employee may become entitled.
> b. As to all other matters concerning this case, the injured worker will remain fully responsible.
> c. The Graham Law Firm agrees that they will provide competent representation within the scope of the limited representation, as required by Alaska Rule of Professional Conduct 1.2.
> d. This representation may be terminated at any time by either the Employee or the Graham Law Firm by providing reasonable notice to all parties. Otherwise, this limited appearance will remain effective until it is replaced by a more recent entry of appearance or until the termination of the claim.
>
> 4. The Graham Law Firm requests that all parties and the Board provide all Notices and Documents via email to service@grahamlawfirm.com. (Notice of Limited Appearance, May 8, 2025).

89) On May 8, 2025, Employee also filed a request to "accept and approve" Graham's limited appearance. In an accompanying memorandum, Employee relied on Civil Rule 81(d), Rule of Professional Conduct 1.2(c), 8 AAC 45.178, and AS 23.30.145 for support. She contended it was prudent for the Board to accept and approve Graham's appearance even though it did not strictly comply with Board regulations. Employee suggested the Board waive or modify its regulations. She said a limited representation was reasonable in her case because she had been unable to find another attorney to represent her. Employee expected Graham to substantially assist her and address specific procedural or substantive issues critical to her case. She contended this limited representation would support "the broader public policy goal" to ensure access to competent legal counsel for injured workers. Employee acknowledged that Graham said he could provide "specialized, albeit limited, legal support" but had declined to provide full representation due to time constraints. Signing the memorandum, Employee acknowledged:

> I understand and acknowledge that I will remain fully responsible for continuing to represent myself in this claim, remaining in contact with the Board and with the representatives of my employer, complying [with] all of deadlines and requirements legally imposed upon me as a result of my claim. (Petition to Accept and Approve Limited Entry of Appearance and Memorandum in Support, May 8, 2025).

90) On May 22, 2025, Employer filed with the Division and served on Employee, but not on Bredesen or Graham, all "previously served documents produced" to Employee prior to May 22, 2025, which included 953 pages. (Notice of Intent to Rely, May 22, 2025).

91) On May 22, 2025, Employer filed with the Division and served on Employee but not on Bredesen or Graham, documents Bates-stamped "RFP 000902 to 000911." Attached were Hawaii treatment plans and approval requests. (Notice of Intent to Rely, May 22, 2025).

92) On May 22, 2025, Employee, while represented by Graham, filed a *pro se* petition for a protective order "to strike any records from file Employee did not sign a release for." There was no further explanation. (Petition, May 22, 2025).

93) On May 22, 2025, Employee, Bredesen, Graham and Holdiman-Miller appeared telephonically before a Board designee. They reviewed the issues set for the June 24, 2025 hearing and the designee summarized Employee's position on each. The designee recorded:

> Regarding Employee's 3/25/2025 Petition for Additional Time to Request a Hearing, Designee notes that the 6/24/2025 Hearing is already scheduled and confirmed that parties may stipulate to continue the same. Ultimately, parties agreed to proceed to hearing on certain issues (noted above) and continue other issues to a later date.

The designee further noted the parties disagreed as to whether Employer had a duty to serve discovery on Graham and Bredesen, and added that issue for hearing. The listed issues for hearing ultimately changed at the June 17, 2025 prehearing conference. (Prehearing Conference Summaries, May 22, 2025; June 17, 2025).

94) On June 17, 2025, Employee, Holdiman-Miller and Graham appeared telephonically before a Board designee. This was the final prehearing conference before the July 16, 2025 hearing, and identified the ultimate issues for that hearing:

> (1) Past and ongoing COLA
> (2) Employer's 9/26/2024 petition for a Social Security offset

(3) Employee's 2/6/2025 petition to enforce the designee's 12/19/2024 discovery order and for sanctions
-Including Employee's 4/1/2025 petition for further sanctions
(4) Employee's 2/27/2025 petition to preserve evidence
(5) Employee's 3/25/2025 petition for additional time to request a hearing on 1/25/2022 WCC
(6) Employee's 5/8/2025 petition to accept limited entry of appearance -- David Graham
-Parties' disagreement regarding service of discovery on Bredesen and Graham
(7) Employee's 5/22/2025 petition to strike any records for which Employee did not sign releases

Regarding Employee's May 22, 2025 petition to strike records for which Employee did not sign a release, the designee suggested that "Employee provide a list of the records she feels should be stricken." Employee stated she objected to all records "not related to her work injury" and contended she was never given records Employer intended to use at hearing. She identified that she had signed releases for her shoulder but Employer had gathered records relating to her "entire body going back to the date of her birth." Employee stated she has "some records" but did not know that she had all; therefore, Employee contended she could not "identify the records that need to be stricken." (Prehearing Conference Summary, June 17, 2025).

95) On June 18, 2025, Employer filed with the Division served on Employee, but not on Bredesen or Graham, documents upon which it intended to rely at hearing: A June 18, 2025 letter from Holdiman-Miller to Employee; Employer's Privilege Log II; and "supplemental file materials" Bates-stamped "000912 to 001054." Employee provided this in response to Employee's May 19, 2025 discovery request. The Privilege Log II covers privileges from the adjuster's file spanning from July 7, 2020 through May 22, 2025. The attached adjuster's notes, which purport to bring the production of those up to date, span from July 6, 2020 through May 14, 2025. Some entries are redacted as reflected in Privilege Log II: September 19, 2024; January 21. 2021; and April 3, 2025. On the updated payment spreadsheet for medical providers, which is document "001040," there are two line items redacted; these items appear between an entry for Healthlift Pharmacy for January 17, 2025, and another entry for Healthlift Pharmacy from February 13, 2025, suggesting that the redacted providers' services occurred on or between those dates. However, the only item dated September 19, 2024 on the "Medical Cost Summary List" is a $12,810 payment to "Eaze Medical Solutions." Also included were June 2025 emails between

Employee, Holdiman-Miller and Graham, as well as nurse case manager documents, which look like those previously produced. (Notice of Intent to Rely, June 18, 2025).

96) On June 20, 2025, Graham entered another limited appearance on Employee's behalf:

> The subject matter, limitations, and material terms of this limited entry of appearance are as follows.
>
> 1. The scope of the representation is limited to the above captioned case.
> 2. Except as modified by the material terms below, the legal services that the Graham Law Firm will provide within the scope of this representation is limited to the following:
>
> a) Providing the Employee with case evaluation and recommended strategies;
> b) Providing the Employee with general guidance as to the law, procedure, resources and rules;
> c) Providing the Employee with legal advice, guidance, and legal opinions;
> d) Providing the Employee with an overview, analysis, and recommended action with respect to medical reports, pleadings, and orders;
> e) Providing the Employee with guidance on communicating with the Alaska Workers' Compensation Board, including the drafting of pleadings and participation in such proceedings as may be appropriate; and
> f) Providing the Employee with settlement advice.
>
> 3. The material terms of this representation are as follows:
>
> a. The Graham Law Firm will provide full representation on the claims for legal costs of the Graham Law Firm to which the Employee may become entitled.
> **b. The Graham Law will provide full representation as to all matters related to the hearing presently scheduled to be held on July 16, 2025.**
> c. As to all other matters concerning this case, the injured worker will remain fully responsible, **but the Graham Law will provide the limited representation as set forth above as to all matters related to this claim**.
> d. The Graham Law Firm agrees that they will provide competent representation within the scope of the limited representation, as required by Alaska Rule of Professional Conduct 1.2.
> e. This representation may be terminated at any time by either the Employee or the Graham Law Firm by providing reasonable notice to all parties. Otherwise, this limited appearance will remain effective until it is replaced by a more recent entry of appearance or until the termination of the claim.
>
> 4. The Graham Law Firm requests that all parties and the Board provide all Notices and Documents via email to service@grahamlawfirm.com. (Amended Notice of Limited Appearance, June 20, 2025; emphasis in original).

97) On June 26, 2025, Employer filed and served on Graham and Employee, but not on Bredesen, documents upon which it intended to rely at hearing. Attached were: A variety of Employee's more recent medical records; signed releases; a Prehearing Conference Summary; a letter to Employee's former attorney Eklund including 796 pages of discovery [not visible to the panel as the documents were on a compact disc, attached as a photocopy of the disc only]; Employer's December 23, 2024 "answer" to Employee's December 17, 2024 discovery letter; another copy of Privilege Log I; Dr. Pino's *curriculum vitae*; a spreadsheet showing payments to Employee from July 3, 2020 through October 27, 2024; Employer's October 28, 2024 letter to Bredesen; a Hawaii Workers' Compensation Treatment Plan, neither approved nor denied and unsigned by the adjuster; Employer's January 30, 2023 letter to Bredesen regarding previously provided discovery to Eklund, and Employer's supplemental responses; Employee's initial injury report; Dr. Bell's EME report; Employee's May 17, 2022 deposition transcript; Employer's October 28, 2024 discovery request; Employee's December 30, 2024 response to Employer's October 28, 2024 discovery request, with the Hawaii Real Property Tax Bill attached; and the May 13, 2024 SSD Notice of Award. (Notice of Intent to Rely, June 26, 2025).

98) On June 26, 2025, Employee filed and served on Holdiman-Miller and Bredesen, documents upon which she intended to rely at hearing. The attached 48 pages include: 2020-2021 emails and texts between Employee and her adjuster addressing primarily check issues and EME scheduling; medical records for Employee's recent examinations; 2025 emails between Holdiman-Miller and Bredesen regarding attorney fees; Holdiman-Miller's 2025 response to a discovery request from Bredesen; 2025 emails between Employee and her treating physician at Vally Medical; Bredesen's November 14, 2024 letter to Holdiman-Miller regarding *ex parte* communication allegations; his similar January 23, 2025 letter; a document regarding "metadata"; various treatment plans; negotiation emails and letters between Bredesen and Holdiman-Miller; and Stone's September 7, 2021 letter to Eklund providing the 796 page response to Eklund's discovery request, which included Employee's entire JBER medical file. Notably, many documents included a notation that PDFs were attached, but the filing contains no active links, so the panel cannot review any attachments. (Notice of Intent to Rely, June 26, 2025).

99) On July 9, 2025, Employee filed and served her hearing brief. She contended that, despite the designee's discovery order, Employee had encountered a "pattern of willful obstruction, obfuscation, delay, and bad faith action from the defendants." Employee relied on the "evidence

presented at hearing," to prove the alleged discovery abuses. Having alleged discovery abuses, Employee requested an order granting and imposing the "full extent" of sanctions authorized under AS 23.30.108(c) and with the Board's "inherent authority" to impose other sanctions. She contended sanctions were "essential to uphold the integrity and purpose" of the entire workers' compensation system. (Employee Sabrina Martino's Hearing Brief, July 9, 2025).

100) Employee's hearing brief listed all issues, but misidentified additional issues not scheduled for the June 24, 2025 hearing. Specifically, the following discussed in her brief were not issues set for hearing: Employee's January 25, 2022 claim for "medical" and "transportation costs"; a February 13, 2024 unfair controversion allegation; an unspecified penalty; interest; and Employer's alleged failure to preauthorize treatment. (Employee Sabrina Martino's Hearing Brief, July 9, 2025; Prehearing Conference Summary, June 17, 2025).

101) On her February 6, 2025 petition for sanctions, Employee argues Employer deliberately violated the designee's December 19, 2024 order to produce "certain discovery." She contended Employer "willfully failed and refused to provide the discovery ordered." Employee relied on Civil Rule 37(b), 8 AAC 45.054(e), and two Court opinions for support. She alleged Employer's "willful delay, obstruction, and misconduct within the discovery process," and alleged Employer thought itself "above the law." She contended that without sanctions, Employer would continue to "spit in the face of the law." Employee noted that many claimants had been "struck with sanctions" for "discovery misconduct." She found no case where a defendant had been sanctioned. Employee argued both parties should be held to the same discovery standard. She concluded "under these facts," dismissing Employer's defenses "appears to be the most appropriate sanction." (Employee Sabrina Martino's Hearing Brief, July 9, 2025).

102) Employee contended she had been unable to obtain all facts relevant to her claims including full disclosure of "all contacts" between the defendants and her treating physicians, Employer's hired physicians, and all payment records and "other relevant information." As a result, she argued she has been unable to prepare fully her present claims for hearing. This included not just her claims on their merits, but her request to preserve evidence, for more time to request a hearing on her January 25, 2022 claim, to strike records that exceeded the scope of signed releases, "among others," and Employer's petition for a Social Security offset. Moreover, Employee requested an order holding in abeyance all her claims and aforementioned petitions until Employer produced

all discovery previously ordered, and any new discovery necessitated thereafter. (Employee Sabrina Martino's Hearing Brief, July 9, 2025).

103) Addressing her "4/7/2025" petition to accept Graham's limited appearance, Employee sought an order approving her right to obtain limited legal representation. She argued this issue affected the parties' procedural rights, Employer's alleged "deliberate interference" with her due process, her right to effective limited legal representation and Bredesen's due process rights to participate in these proceedings. As an example, Employee cited Employer's position at the May 22, 2025 prehearing conference at which it advised the designee that Employer would not serve its documents on "either the Graham" or "the Hillside Law Firm" (*i.e.*, Bredesen). She contended Employer willfully filed some pleadings that it was legally required to serve on either or both Graham and Bredesen, but did not. Employee cited Civil Rule 81(d), and Alaska Rule of Professional Conduct 1.2(c), 8 AAC 45.178(a), and AS 23.30.145 as support. She contended that current Board regulations were in place before current rules regarding limited legal representation were promulgated. Thus, in her view the Board's regulation does not address the question at hand. Employee conceded that her limited entry may not strictly comply with existing Board regulations. (Employee Sabrina Martino's Hearing Brief, July 9, 2025).

104) Regarding Employer's September 26, 2024 petition for a Social Security offset, Employee acknowledged she is currently receiving TTD benefits as well as SSD benefits. She relied on AS 23.30.225(b) for support. Employee contended: (1) Employer's defenses should all be dismissed as a sanction, which would resolve this issue; (2) alternately, a decision on this petition should be deferred until all discovery has been completed; (3) it would be improper for this panel to order a retroactive SSD offset. There was no additional analysis. (Employee Sabrina Martino's Hearing Brief, July 9, 2025).

105) Addressing her COLA argument, Employee conceded she was currently receiving TTD benefits and had moved from Alaska to Hawaii where the cost of living is higher than it is in Alaska. She cited AS 23.30.175(a) for support. Employee argued §.175 "which allows only for the reduction of TTD due to a claimant moving to a state with a lower COLA, but fails to authorize an increase from moving to a state with a higher [cost-of-living] than Alaska, violates her right to travel." (Employee Sabrina Martino's Hearing Brief, July 9, 2025).

106) Regarding "all other identified issues," Employee asked that "these remaining issues" be deferred until the defendants complied with the discovery order and any further discovery necessitated by it. (Employee Sabrina Martino's Hearing Brief, July 9, 2025).

107) Other arguments from Employee's hearing brief that were not relevant, because they addressed issues not set for hearing, are not summarized or considered in this decision. (Employee Sabrina Martino's Hearing Brief, July 9, 2025).

108) On July 9, 2025, Employer filed and served its hearing brief on Employee and Graham; it did not serve it on Bredesen. Its brief correctly listed the issues for hearing as set forth in the June 17, 2025 Prehearing Conference Summary. Employer referenced EME reports from Drs. Bell and Rosenbaum. It agreed Bredesen filed a claim for attorney fees and costs, a lien and a petition to join Employee's claim. Employer answered and controverted the claim contending that attorney fees related to discovery and non-disputed issues were without merit. It also discussed procedures on various petitions Employee filed. (Employer's Hearing Brief, July 9, 2025).

109) On Employee's petition for a COLA, Employer argued that based on Employee's medical records, she had moved from Alaska to Hawaii, then to Florida and then back to Hawaii. It agreed she is entitled to a COLA and would receive different amounts based upon where she was living, but never to exceed her Alaska TTD rate, based on AS 23.30.175(5). Employer argued that September 13, 2024, was the first time Employee raised a COLA argument. In response, on October 28, 2024, Employer asked Employee to produce evidence of her address changes "provided to the Board and employer" to support her COLA claim, along with "evidence" of her addresses during the relevant years. Employer argued that rather than produce specific evidence, on December 30, 2024, Employee objected stating she would not reproduce filings made with the Board and copied to Employer, and referred Employer to her vocational rehabilitation documents from 2021, and the 2024 Hawaii Property Tax Bill. Employer contended none of the provided documents identified "with any specificity the dates" when Employee moved to different states or for how long she resided there. Moreover, Employer argued that her mailing address in Hawaii did not confirm that she was living at that address, the length of time she was there or whether she had her mail forwarded. It merely indicated that "Employee owns property in Hawaii." Employer contended it has the right to base a COLA on specific evidence of the state in which Employee was living and the specific dates she lived in those states. "As soon this is provided," Employer

said it "will modify past and future indemnity payments accordingly." (Employer's Hearing Brief, July 9, 2025).

110) Addressing its request for an SSD offset, Employer also cited AS 23.30.225(b) and 8 AAC 45.225(b). It argued that on May 20, 2021, Employer asked Employee to produce all Social Security documentation. Employee responded that she had not applied for SSD benefits and the request was inapplicable. However, on September 13, 2024, Bredesen advised that Employee had recently been awarded SSD benefits, effective May 13, 2024. On September 26, 2024, Employer petitioned for the SSD offset. It requested a retroactive and ongoing SSD offset and recoupment on all indemnity payments. (Employer's Hearing Brief, July 9, 2025).

111) As for Employee's February 6, 2025 petition to enforce the designee's December 19, 2024 discovery order and for sanctions, and her April 1, 2025 petition for further sanctions, Employer argued that Employee and Bredesen created a "huge unfounded, irrelevant discovery issue" because there were no current disputes over her medical treatment or ongoing benefits. Still, on September 30, 2024, she filed a petition to compel discovery, and a related memo on December 18, 2024. Employer contended that it responded to Employee's December 17, 2024 discovery letter two days later, on December 19, 2024, the same day the designee addressed the motion to compel at a prehearing conference. It argued that Employer had also sent Employee an updated privilege log and provided additional discovery in January 2025. Employer's primary argument was that it provided this discovery even though there were no matters in dispute because Employer had complied with *Martino IV*. It asserted that it had "not denied any benefits and has preauthorized medical treatment" for Employee. Therefore, it argued that no additional evidence is relevant and likely to lead to admissible evidence on any issues, because there are no issues other than a COLA and an SSD offset. Thus, Employer sought an order denying the petition to compel and request for sanctions. (Employer's Hearing Brief, July 9, 2025).

112) On Employee's February 26, 2025 petition to preserve evidence, Employer contended that since there is no current evidence deadline, and all discovery petitions have been adequately answered, and all evidence Employer filed with the Division remains intact, there is no action the Board can or needs to take on this petition. (Employer's Hearing Brief, July 9, 2025).

113) Employer sought an order denying Employee's March 25, 2025 petition for additional time to request a hearing on her January 25, 2022 claim under §.110(c). It contended that Employee filed a claim on January 25, 2022, Employer filed a controversion on February 15, 2022, and thus

Employee had until February 15, 2024 to request a hearing. Employer stated that Employee's March 21, 2025 petition seeking more time to request a hearing was too late and diversionary. Although Employer agreed that the SIME process tolled §.110(c)'s running, the two-year statute began to run again once the SIME was completed. Employer argued that the SIME process ended at the latest by February 22, 2023, when the SIME physician wrote an addendum to his initial report. Therefore, it reasoned that Employee had to request a hearing by no later than February 22, 2025. Since Employee did not file a petition seeking additional time until March 21, 2025, Employer argued her petition for more time must be denied as well as her January 25, 2022 claim under §.110(c). (Employer's Hearing Brief, July 9, 2025).

114) As for Employee's May 8, 2025 petition to accept Graham's limited appearance, Employer argued it was too general. Employer cited Civil Rule 81 and Rule of Professional Conduct 1.2(c) for support. It stated that Graham's limited entry was vague and unreasonable. Employer agreed it is already paying Bredesen ongoing statutory attorney fees on future benefits Employee receives resulting from *Martino IV*. Bredesen also claimed approximately $70,000 in additional fees. Employer contended there is "absolutely no reason" for another attorney to start accruing attorney fees since Employee is receiving all benefits without the need for any litigation, and it has not controverted Employee's benefits. It argued that Employee is essentially seeking triple attorney fees. Employer contended that Employee "trumped up" a non-existent discovery dispute to generate attorney fees. It asked the panel to "provide clear direction on this issue." Employer seeks an order denying a limited appearance because there would be "no award" or any way to "sort out an award." (Employer's Hearing Brief, July 9, 2025).

115) Lastly, Employer asked for an order denying Employee's May 22, 2025 petition to strike records for which Employee did not sign medical releases. It argued it has the right to investigate all causes of her disability to determine if PTD benefits are warranted. Employer agreed it had the burden to prove employability in a PTD claim. Thus, Employer contended that all documents filed with the Division to date are relevant and should remain in the record until the matter is resolved. (Employer's Hearing Brief, July 9, 2025).

116) Other arguments from Employer's brief that were not relevant, because they addressed issues not set for hearing, are not summarized or considered in this decision. Specifically, in response to Employee's objection to Employee's lengthy brief, the panel determined at hearing that beginning at the first full paragraph on page 2, through the end of the first full paragraph on page 12,

Employer's brief contained information not relevant to or addressing the hearing issues. The panel "struck" this material, meaning that while in the record, the panel would not consider this material at this hearing. Further, Employer also addressed an allegation that Employee had failed to obtain medical treatment in violation of statutes and case law, and requested an order suggesting that if she did not pursue additional treatment within 45 days her right to compensation could be suspended or denied. (Employer's Hearing Brief, July 9, 2025; record).

117) Employer again provided Employee with "Privilege Log I." This addressed partially redacted materials from discovery Employer had previously provided. Employer described this information as attorney-client privileged material from the adjuster's file or log notes, including amounts of the insurer's reserves for this case, several pages from Employer's workers' compensation insurance policy, which Employer objected to as not reasonably calculated to lead to admissible evidence, and numerous blank pages, on grounds that they were blank. (Privilege Log I, pgs. 1-2, Exhibit 25 to Employer's Hearing Brief, July 9, 2025).

118) On July 9, 2025, Bredesen filed a 15-page hearing brief in his role as a party whose own claim was joined to Employee's. He correctly set forth the issues scheduled for hearing. However, the first 10 pages of his brief are irrelevant. The next several pages similarly did not address the issues directly. On page 14, Bredesen contended that Employer was wrong to not serve all documents on him as a party under applicable regulations. Bredesen said he would not argue issues that would be argued by Graham, but would comment on evidence preservation and the §110(c) extension issue. On page 15, he offered one paragraph on the evidence preservation issue, asserting that 3 AAC 26.030 required various persons to preserve fully case-related documents. Addressing the §.110(c) issue, Bredesen noted that *Martino IV* did not address Employee's PTD claim because it was not included as an issue for hearing. He contended that if Employee is ultimately determined to be permanently and totally disabled, she could request and obtain a retroactive PTD award at a higher rate than her TTD weekly amount. Bredesen argued the petition for an extension to request a hearing was filed as a "precaution" to preserve Employee's PTD claims back to her injury date. He sought an order granting the petition because Employee's PTD claim "remains unripe" because her physicians have not yet fully diagnosed her injuries. (Attorney's Hearing Brief, July 9, 2025).

119) Division form 07-6138, known as a "Change of Address" form, states its purpose is to give the Division and Employer a changed mailing address "for service." (Observations). Employee has never filed form 07-6138. (Agency file).

120) It is common for medical providers who have limited medical releases signed by a patient to provide all that patient's medical records to requesting parties. (Observations).

121) There is only one COLA ratio for the entire State of Hawaii. (Official notice).

122) On July 16, 2025, Employer filed and served on Graham but not on Bredesen a demonstrative exhibit that included Employer's calculations for the SSD offset and related recoupment. (Notice of Intent to Rely, July 16, 2025).

123) At hearing on July 16, 2025, Bredesen did not initially appear. Approximately mid-way through the hearing, Bredesen appeared by Zoom and asked if anyone wanted his testimony. Employee said she may want to ask Bredesen questions, but if Employer objected to his participation, then she would not call Bredesen. Employer objected to Bredesen's participation as "unnecessary" and "unethical." Consequently, Employee did not call Bredesen as a witness and he disconnected from the Zoom hearing. (Record, July 16, 2025).

124) At hearing, Employer's current adjuster on this case, Berni Seever testified that she has been an adjuster for 43 years and has been adjusting Employee's case since 2023. She explained the insurer's claims note system, which documents all contacts. This would include contacts with anyone related to a case. These contacts are saved in the note system and after 24 hours they cannot be changed. Medical providers can also drop records directly into her system. Once they are in the system they cannot be deleted. Phone calls and emails are also dropped into the file. Since *Martino IV* issued, Seever has had no direct conversations with medical providers. She did discuss with medical facilities, but not the physicians, about billing issues. Seever had no discussion with physicians or their offices regarding treatment. She never spoke to a physician at UCLA about Employee's care. All contacts would be in her notes. (Record).

125) Seever also testified that her system generates spreadsheets. At this point in Seever's testimony, Employee objected to her testimony on grounds that Employer could not present at hearing evidence that it did not produce as the designee had previously directed. Graham stated that he had looked at the prior "six months of adjuster's notes" and many were redacted. Because they were redacted, Graham argued that Employee could not establish or be specific as to what discovery was missing and Graham was "learning new things" through Seever's testimony that he

had never heard before. In other words, Employee objected to admission of any evidence at hearing that Employer had previously redacted. He added that all redactions were supposedly justified by an attorney-client privilege, and the information to which Seever was testifying at hearing did not involve attorney-client privilege issues. Holdiman-Miller advised that she made redactions to the adjuster's notes, not Seever. She argued that without identifying the redactions in question, Employer could not identify if the redacted material came under a justifiable privilege. The panel reserved judgment on this objection. (Record).

126) Seever testified that near the end of June 2025, she sent additional records to Holdiman-Miller's office in response to discovery. (Record).

127) On cross-examination, Seever testified that her attorney redacts records, she does not. She had not seen the redactions, but was aware that they would generally relate to the attorney-client privilege. Seever produced all claim notes in her file to her attorney but she does not know what was produced or not produced. (Record).

128) Seever testified she had no direct contact with EME physicians Bell or Rosenbaum. She may have had contact with their offices for scheduling. Seever affirmed that payments to providers are documented, she had no knowledge why any payments to medical providers on spreadsheets would be redacted, and she would be surprised if they were. (Record).

129) Seever could not recall if she retained ExamWorks as an EME company in this case. She clarified that the system-generated spreadsheets contain all medical payments for medical care, prescriptions, and whatever treatment is rendered and paid for. It does not include payments to EME arrangers or providers. EME physicians are paid and coded in a different category based on agreements with employers that require the employers to pay the EME charges directly. When asked to clarify if payments made to EME providers are not included in the insurer's claim file system for this case, Seever did not directly answer the question but stated, "No, those were not requested. We provided all of the treatment and medical payment records." However, EME payments do show up in a payment history generated by their system. If Employee wanted to request those payments, she would have asked to ask for "an expense payment history," which would include significant redactions because that part of her system also includes legal costs. However, as Seever reviewed her expense page live at hearing, she testified that any payment made to ExamWorks would not show up in it, because ExamWorks "bulk bills." If requested, Seever could contact ExamWorks for that information. Seever could not recall the nurse case

manager in this case. Holdiman-Miller stated that Paradigm was the nurse case manager company and Bernie Farrell was the nurse case manager. Seever testified that Paradigm also bulk-bills so payments made to that company also did not appear on the requested discovery. However, she clarified there was one 2021 payment to ExamWorks for $3,900. (Record).

130) On re-direct, Seever testified that if Employee had questions about communications regarding Employee's pharmacy card, she would have to ask Optum, the company that sent the card out. Seever only recommended the card, and Optum sent it out. (Record).

131) In response to the designated chair's question, Seever testified that she had not consulted with any EME physician whose name does not appear in Employee's agency file, or obtained an oral or written opinion from that physician in this case. Likewise, she was not aware that any other person on Employer's side had done so. (Record).

132) At hearing, Employee did not initially testify on her own behalf, but testified only after Employer called her as a witness. Employer's questioning involved primarily issues not set for hearing. However, Employee stated her SSD was based on "everything" that was physically wrong with her, which would include her work injury with Employer. Employee agreed she had received "lots of records" as discovery from Employer, but complained that it was redacted. She mentioned that "things that were previously available are now redacted." Employee did not identify these documents. When asked what she thought was missing from her medical records that would affect her medical treatment, Employee stated communications between the adjuster and her doctors at Vally Medical "would be the biggest," along with an ExamWorks form, payment spreadsheets and nurse case manager materials. Employee conceded that she did "not know" what contact there may have been with EME physicians. Employee made a vague reference to instructions to "delete anything that is not applicable." She added, "There are so many things that are being hidden." When specifically asked what she was trying to get from her request for additional discovery, and what Employer could do to assist in her quest, Employee stated she wanted to see how "you are influencing my doctors." Employee wanted payment records to her physicians to determine, "Are they getting paid?" When reminded that the adjuster had testified at hearing that there was no influence exerted on her physicians, and her providers' bills were paid, Employee was unsatisfied. "I do not know that I have all of it." (Record).

133) Regarding Employee's COLA, Employer asked if she had ever filled out a form and filed with the Division "explaining the different addresses [she had] since 2020?" Employee responded

that she had filled out reemployment material and put her address on that. She was uncertain if she ever filled out a "change of address form" and filed it with the Division. (Record).

134) Attorneys usually keep exact copies of all they send to other people. (Experience).

PRINCIPLES OF LAW

AS 01.10.050. Tense, number, and gender. . . .

(b) words in the singular number include the plural, and words in the plural number include the singular. . . .

AS 23.30.001. Intent of the legislature and construction of chapter. It is the intent of the legislature that

(1) This chapter be interpreted . . . to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .

The Board may base its decision on direct testimony, medical findings, tangible evidence, and on the Board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987). If a claim for benefits is premature, it should be held in abeyance until it is timely. *Egemo v. Egemo Const. Co.*, 998 P.2d 434 (Alaska 2000).

AS 23.30.005. Alaska Workers' Compensation Board. . . .

(h) . . . Process and procedure under this chapter shall be as summary and simple as possible. . . .

AS 23.30.095. Medical treatments, services, and examinations. . . .

(e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice authorized to practice medicine under the laws of the jurisdiction in which the examination occurs, furnished and paid for by the employer. The employer may not make more than one change in the employer's choice of a physician or surgeon without the written consent of the employee. . . .

An employer is liable to pay for medical services, not to arrange for them. *Richard v. Fireman's Fund Insurance Co.*, 384 P.2d 445 (Alaska 1963).

> **AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance**. . . .
>
> (c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. . . .
>
> (d) If the employee files a petition seeking a protective order to recover medical and rehabilitation information that has been provided but is not related to the employee's injury, and the board or the board's designee grants the protective order, the board or the board's designee granting the protective order shall direct the division, the board, the commission, and the parties to return to the employee, as soon as practicable following the issuance of the protective order, all medical and rehabilitation information, including copies, in their possession that is unrelated to the employee's injury under the protective order. . . .
>
> **AS 23.30.110. Procedure on claims**. . . .
>
> (c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.
>
> (d) At the hearing the claimant and the employer may each present evidence in respect to the claim and may be represented by any person authorized in writing for that purpose.
>
> **AS 23.30.120. Presumptions.** (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
>
> (1) the claim comes within the provisions of this chapter; . . .

Benefits sought by an injured worker are presumptively compensable and the presumption applies to any claim for compensation under the Act. *Meek v. Unocal Corp.*, 914 P.2d 1276 (Alaska 1996).

It applies to every prong of a factual dispute. *Sokolowski v. Best Western Golden Lion Hotel*, 813 P.2d 286 (Alaska 1991). To attach the presumption, without regard to credibility, an injured employee must establish a "preliminary link" between his injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). Once the presumption attaches, without regard to credibility, the employer must rebut the raised presumption with "substantial" evidence. *Huit v. Ashwater Burns, Inc*., 372 P.3d 904, 919 (Alaska 2016).

"Substantial evidence" is the amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion given the whole record. *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978). If the employer's evidence rebuts the presumption, it drops out and the employee must prove his claim by a preponderance of evidence. *Huit*. This means the employee must "induce a belief" in the fact-finders' minds that facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the last step, evidence is weighed, inferences are drawn, and credibility is considered. *Huit*. *Vue v. Walmart Associates, Inc.*, 475 P.3d 270 (Alaska 2020) held the worker prevailed on the raised but unrebutted presumption.

> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive. . . .

The Board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc*., 204 P.3d 1001, 1008 (Alaska 2009).

> **AS 23.30.145. Attorney fees.** (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, . . .
>
> (b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. . . .
>
> **AS 23.30.155. Payment of compensation**. . . .

> (j) If an employer has made advance payments or overpayments of compensation, the employer is entitled to be reimbursed by withholding up to 20 percent out of each unpaid installment or installments of compensation due. More than 20 percent of unpaid installments of compensation due may be withheld from an employee only on approval of the board. . . .
>
> **AS 23.30.175. Rates of compensation**. (a)The weekly rate of compensation for disability or death may not exceed the maximum compensation rate. . . .
>
> (b) The following rules apply to benefits payable to recipients not residing in the state at the time compensation benefits are payable:
>
> > (1) the weekly rate of compensation shall be calculated by multiplying the recipient's weekly compensation rate calculated under . . . 23.30.185 . . . by the ratio of the cost of living of the area in which the recipient resides to the cost of living in the state;
> > . . . .
> > (5) application of (1)-(4) of this subsection may not result in raising a recipient's weekly compensation rate to an amount that exceeds the weekly compensation rate that the recipient would have received if the recipient had been residing in the state.

Roberge v. ASRC Construction Holding Co., 503 P.3d 102, 103 (Alaska 2022) expressly overruled prior Commission precedent and held:

> An Alaska Workers' Compensation Act provision sets maximum compensation rates for injured employees; another provision applies a cost-of-living ratio only to out-of-state recipients. The parties to this appeal dispute the sequence for applying the provisions when calculating compensation. We conclude that the Act requires first applying the cost-of-living ratio and then applying the maximum rate.
>
> **AS 23.30.180. Permanent total disability.** (a) In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. . . .
>
> **AS 23.30.185. Compensation for temporary total disability**. In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. . . .
>
> **AS 23.30.225. Social security and pension or profit sharing plan offsets**. . . .

> (b) When it is determined that, in accordance with 42 U.S.C. 401-433, periodic disability benefits are payable to an employee or the employee's dependents for an injury for which a claim has been filed under this chapter, weekly disability benefits payable under this chapter shall be offset by an amount by which the sum of (1) weekly benefits to which the employee is entitled under 42 U.S.C. 401-433, and (2) weekly disability benefits to which the employee would otherwise be entitled under this chapter, exceeds 80 percent of the employee's average weekly wages at the time of injury.

In *Green v. Kake Tribal Corp.*, 816 P.2d 1363 (Alaska 1991) the claimant's combined SSD and PTD benefits exceeded 80 percent of his preinjury earnings. Consequently, the SSA automatically took an offset from the claimant's SSD benefits so he would not be overpaid. At the same time, the workers' compensation insurer was paying him the full amount he was entitled to for PTD benefits. *Green* found the claimant "was receiving exactly that to which he was entitled." However, as between the insurer and the SSA, "the insurer was paying more than it had to," while "the SSA was paying less." In other words, if the SSA is aware that the claimant is receiving workers' compensation benefits, the SSA may take its own offset until the insurer seeks one under state law. This results in the injured worker not getting more than the limit, either way.

The insurer petitioned the Board for an SSD benefit offset; the Board initially granted the offset and authorized a statutory 20 percent recovery from future PTD benefits. Ultimately the claimant received a lump-sum SSD payment for retroactive benefits totaling over $36,000. This created an overpayment credit in the insurer's favor. The insurer requested an order under §§.155(j) and .225(b) allowing it to withhold 100 percent of future payments until it recovered the overpaid PTD benefits. If its 100 percent offset request was granted, the insurer would recover its overpayment in about six years. If the insurer was limited to recover only 20 percent, it would take 33 years. Given these facts, the Board modified its original order and authorized the insurer to withhold 100 percent of future PTD benefit compensation until it recovered its overpayment.

On appeal, the claimant argued that the Board erred by allowing the insurer to withhold 100 percent of his future PTD benefits. *Green* stated, "A brief consideration of the economic reality of the situation demonstrates why this argument is meritless."

> As noted above, before the offset ordered in the Board's [first decision], Green received exactly what he was entitled to receive. [The insurer], however, paid more

> than required, SSA paid less. . . . The Board initially authorized [the insurer] to recover its overpayments over the next thirty-three years *from Green.* SSA then refunded its underpayments in a lump sum *to Green* (all italics in original). Green is thus the middleman in what essentially is a settling of accounts between SSA and [the insurer].

Considering the claimant's contention that this result was unfair, *Green* stated:

> Green is still in an enviable position: he gets money from SSA today, but only need dole it out to [the insurer] over the next six years. Or put another way, Green effectively has a six-year, interest-free loan of over $36,000.
>
> The complaint that Green will receive "zero compensation," or "reduced compensation," over the next six years is without economic foundation: he has already received his compensation for the next six years.
> . . . .
>
> . . . Green has already *secured* the equivalent of his compensation for the next six years; the only thing being limited is how much of a time value bonus [*i.e.*, interest on the lump-sum SSD payment] he gets in addition to this compensation.

Addressing the claimant's contention that the SSD money was not an "overpayment" by the insurer because it was "federal money," owed to the claimant under federal law, *Green* stated:

> The conclusion which Green would have this court draw is that the lump sum was no more than that to which he was entitled under federal law, and that [the insurer's] withholdings are from payments to which he will be entitled under state law. This line of reasoning suggests that the Board is indeed burdening Green's entitlements, a suggestion that is in fact an illusion in light of the economic reality of the situation. The fallacy giving rise to this illusion, of course, is to consider the lump sum an entitlement without simultaneously recognizing prior [insurance company] payments as overpayments.
> . . . .
>
> Section 155(j) of the Workers' Compensation Act [Act] clearly envisions that the Board may under some circumstances approve the withholding of more than 20 percent of unpaid installments in order for an employer to recoup an overpayment. At some point we may need to involve ourselves in the definition of those circumstances. But where, as here, the worker stands to come out ahead even with 100 percent withholding, there is no reason to question the Board's judgment (italics in original).

Underwater Construction, Inc. v. Shirley, 884 P.2d 150 (Alaska 1994) held that "average weekly wages" in AS.23.30.225(b) refers to the historical earning capacity used to calculate compensation. Accordingly, it is the same as "gross weekly earnings" in AS 23.30.220(a)(1).

> **3 AAC 26.030. File and record documentation.** (a) Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a claim under any type of insurance must document each action taken on a claim. The documentation must contain all notes, work papers, documents and similar material. The documentation must be in sufficient detail that relevant events, the dates of those events, and all persons participating in those events can be identified. The documentation may include legible copies of originals and may be stored in the form of microfilm or electronic media. The documentation is subject to examination and copying by the director or persons acting on the director's behalf. . . .
>
> **8 AAC 45.020. Transaction of business.** . . .
>
> (d) Papers and documents filed by facsimile transmission or by electronic mail must be in compliance with the following:
>
> . . . .
>
> (3) the filing party must attach proof of service as required by 8 AAC 45.060 by including it on, or attaching it to, the filed document;
>
> . . . .
>
> (12) failure to adhere to the process under this subsection may result in rejection of the submitted documents.
>
> **8 AAC 45.040. Parties.** (a) Except for a deceased employee's dependent or a rehabilitation specialist . . . a person other than the employee filing a claim shall join the injured employee as a party.
>
> . . . .
>
> (f) Proceedings to join a person are begun by
>
> (1) a party filing with the board a petition to join the person and serving a copy of the petition, in accordance with 8 AAC 45.060, on the person to be joined and the other parties. . . .
>
> . . . .
>
> (h) If the person to be joined or a party
>
> (1) objects to the joinder, an objection must be filed with the board and served on the parties and the person to be joined within 20 days after service of the petition or notice to join; or

(2) fails to timely object in accordance with this subsection, the right to object to the joinder is waived, and the person is joined without further board action. . . .

8 AAC 45.050. Pleadings. (a) A person may start a proceeding before the board by filing a written claim or petition.

(b) For claims and petitions under this subsection,

(1) a claim is a written request for benefits, including compensation, attorney fees, costs. . . .

8 AAC 45.054. Discovery. . . .

(d) A party who refuses to release information after having been properly served with a request for discovery may not introduce at a hearing the evidence which is the subject of the discovery request. . . .

8 AAC 45.060. Service. . . .

(b) . . . Except for a claim, a party shall serve a copy of a document filed with the board upon all parties or, if a party is represented, upon the party's representative. . . . If a right may be exercised or an act is to be done, three days must be added to the prescribed period when a document is served by mail.

(c) A party shall file proof of service with the board. . . .

(d) A proof of service must set out the names of the persons served, method and date of service, place of personal service or the address to which it was mailed or sent by facsimile or electronically, and verification of successful sending if required. The board will, in its discretion, refuse to consider a document when proof of its service does not conform to the requirements of this subsection.

8 AAC 45.063. Computation of time. (a) In computing any time period prescribed by the Act or this chapter, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is included, unless it is a Saturday, Sunday or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. . . .

8 AAC 45.065. Prehearings. (a) . . . At the prehearing, the board or designee will exercise discretion in making determinations on

(1) identifying and simplifying the issues;

. . . .
(9) discovery requests;
. . . .
(15) other matters that may aid in the disposition of the case.
. . . .

(c) After a prehearing the board or designee will issue a summary of the actions taken at the prehearing, the amendments to the pleadings, and the agreements made by the parties or their representatives. The summary will limit the issues for hearing to those that are in dispute at the end of the prehearing. Unless modified, the summary governs the issues and the course of the hearing.

(d) Within 10 days after service of a prehearing summary issued under (c) of this section, a party may ask in writing that a prehearing summary be modified or amended by the designee to correct a misstatement of fact or to change a prehearing determination. The party making a request to modify or amend a prehearing summary shall serve all parties with a copy of the written request. If a party's request to modify or amend is not timely filed or lacks proof of service upon all parties, the designee may not act upon the request.
. . . .

(f) Immediately upon a change of address for service, a party or a party's representative must file with the board and serve on the opposing party a written notice of the change. Until a party or the board receives written notice of a change of address, documents must be served upon a party at the party's last known address.
. . . .

(h) Notwithstanding the provisions of (d) of this section, a party may appeal a discovery order entered by a board designee under AS 23.30.108 by filing with the board a petition in accordance with 8 AAC 45.050 that sets out the grounds for the appeal. Unless a petition is filed under this subsection no later than 10 days after service of a board designee's discovery order, a board designee's discovery order is final. . . .

8 AAC 45.070. Hearings. . . .

(g) Except when the board or its designee determines that unusual and extenuating circumstances exist, the prehearing summary, if a prehearing was conducted and if applicable, governs the issues and the course of the hearing. . . .

8 AAC 45.082. Medical treatment. . . .

(b) A physician may be changed as follows:
. . . .

> (3) for an employee injured on or after July 1, 1988, an employer's choice of physician is made by having a physician or panel of physicians selected by the employer give an oral or written opinion and advice after examining the employee, the employee's medical records, or an oral or written summary of the employee's medical records; . . .
> . . . .

(c) If, after a hearing, the board finds a party made an unlawful change of physician in violation of AS 23.30.095(a) or (e) or this section, the board will not consider the reports, opinions, or testimony of the physician in any form, in any proceeding, or for any purpose. . . .

8 AAC 45.106. Procedures for board panel members to avoid conflict of interest, impropriety, and appearance of impropriety. . . .

(d) . . . If the board panel member does not recuse oneself from the proceeding, the remaining board panel members shall determine whether the board panel member who is the subject of the petition may hear the case.

8 AAC 45.110. Record of proceedings. (a) . . . Under this section,

> (1) . . . "a party to a claim or a petition" is the employee, the employer, the insurer, a person sought to be joined or consolidated to a claim or petition, or the rehabilitation specialist appointed or selected in accordance with AS 23.30.041 or 23.30.043. . . .

(b) . . . Medical reports submitted into evidence will remain in the case file unless removed by an order of the board or the board's designee for good cause or under AS 23.30.108. . . .

8 AAC 45.120. Evidence. . . .

(e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. . . . The rules of privilege apply to the same extent as in civil actions. . . .

8 AAC 45.138. Cost-of-living adjustment. . . .
. . . .

(d) If the cost-of-living adjustment under AS 23.30.175 and this section results in a compensation rate that exceeds the maximum weekly rate provided in AS 23.30.175, the recipient's compensation rate must be reduced to the maximum weekly rate in effect under AS 23.30.175 at the time of injury. . . .

8 AAC 45.178. Appearances and withdrawals. (a) A person who seeks to represent a party in a matter pending before the board shall file a written notice of appearance with the board, and shall serve a copy of the notice upon all parties. The notice of appearance must include the representative's name, address, and phone number and must specify whether the representative is an attorney licensed to practice law within the State of Alaska. . . .

8 AAC 45.195. Waiver of procedures. A procedural requirement in this chapter may be waived or modified by order of the board if manifest injustice to a party would result from a strict application of the regulation. However, a waiver may not be employed merely to excuse a party from failing to comply with the requirements of law or to permit a party to disregard the requirements of law.

8 AAC 45.225. Social security and pension or profit sharing plan offsets. . . .

(b) An employer may reduce an employee's weekly compensation under AS 23.30.225(b) by

(1) getting a copy of the Social Security Administration's award showing the

(A) employee is being paid disability benefits;
(B) disability for which the benefits are paid;
(C) amount, month, and year of the employee's initial entitlement; and
(D) amount, month, and year of each dependent's initial entitlement;

(2) computing the reduction using the employee or beneficiary's initial entitlement, excluding any cost-of-living adjustments;
(3) completing, filing with the board, and serving upon the employee a petition requesting a board determination that the Social Security Administration is paying benefits as a result of the on-the-job injury; the petition must show how the reduction will be computed and be filed together with a copy of the Social Security Administration's award letter;
(4) filing an affidavit of readiness for hearing in accordance with 8 AAC 45.070(b); and
(5) after a hearing and an order by the board granting the reduction, completing a Compensation Report form showing the reduction, filing a copy with the board, and serving it upon the employee. . . .

The SSA has a Program Operations Manual System (POMS) that provides operational guidelines to assist users in processing SSA claims. POMS Section DI 52120.010, effective date July 30, 2009, which still remains in effect, states:

> **DI 52120.010 Alaska Workers' Compensation (WC)**
>
> B. Processing Alaska WC offset cases
>
> Alaska reduces its WC due to Social Security disability insurance benefits. Based on Office of General Counsel (OGC) opinions dated December 30, 2008 and April 13, 2009 regarding Alaska's WC reverse offset provisions (AS §23.30.225(b)), reverse offset applies to some, but not all types of Alaska WC payments. . . .
>
> C. Types of WC payments
>
> Benefits are payable every 14 days unless the WC Board permits a different schedule. Payment is due on the last day of the 14-day period. When requesting WC payment information from Alaska WC Board, use their form Request for Release of Information (Form 07-6121). SSA employees do not need to pay a fee, submit a photocopy ID, or obtain the claimant's signature as stated on the form.
>
> **1. WC types and reverse offset applicability**
> The following lists the types of Alaska WC and whether reverse offset applies:
>
> - **Temporary Total (TT)** -- Reverse jurisdiction applies. Do not impose offset. . . .

ANALYSIS

1) Shall Employee's request for a COLA be granted?

It is undisputed that Employee was injured on June 30, 2020, in Anchorage, Alaska, relocated to Hawaii, then to Florida and then back to Hawaii. The parties agree that she would be entitled to different weekly TTD benefit payments based upon her residence at any given time pursuant to AS 23.30.175(b). On September 13, 2024, Bredesen wrote to Holdiman-Miller requesting a COLA for Employee. Bredesen's letter provided the exact dates and places to which the COLA would apply beginning July 6, 2020, the date she first received disability benefits:

City & State	From	Through
Anchorage, Alaska	July 6, 2020	September 5, 2020
Unspecified, Hawaii	September 6, 2020	January 21, 2021
St. Petersburg, Florida	January 22, 2021	April 3, 2021

Unspecified, Hawaii	April 4, 2021	Present

It is immaterial to a COLA that Employee did not name her city in Hawaii, because the panel takes official notice that the COLA ratio is the same for the entire state. *Rogers & Babler*.

On October 28, 2024, Employer contended Employee had to prove where she lived with "evidence of address changes" she had provided to the Division and Employer, "along with evidence" of Employee's addresses over the years, to support her COLA claim. In context, Employer was probably referring to Division form 07-6138, known as a "Change of Address" form. But as the form states, its purpose is to give the Division and Employer a changed mailing address "for service" purposes under 8 AAC 45.060(f), and until the Division and the Employer received "written notice of a change of address" all documents had to "be served upon a party at the party's last known address." 8 AAC 45.060(f).

If this is the form to which Employer's October 28, 2024 letter referred, Employer is mistaken about its purpose. Nothing in the Alaska Workers' Compensation Act (Act) or applicable regulations required Employee to use form 07-6138 to give written notice of an address change for service, much less to prove where she resided. The form is provided for the parties' convenience. Its expressed purpose is for "service," and it is not tied directly to a COLA request. Any written notice would suffice for providing a new mailing or residence address. Here, it apparently did as Employer routinely sent Employee's checks to her updated mailing addresses that she provided regularly by emails. As for Employer's second requirement, "evidence" of Employee's addresses over the applicable years, Bredesen's September 13, 2024 letter provided the information necessary to determine a COLA. Moreover, §.175(b) does not require specific evidence or proof of a claimant's physical address for an insurer to apply a COLA to "recipients not residing in the state at the time compensation benefits are payable." Bredesen's September 13, 2024 letter was precisely the sort of relevant "evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." 8 AAC 45.120(e).

Alternately, as the parties apparently disagree over Employee's physical residence during the periods in question for a COLA, there is a factual dispute to which the presumption of

compensability analysis applies. AS 23.30.120(a)(1); *Meek*; *Sokolowski*. Without regard to credibility, Employee raised the presumption on her physical residences with:

On July 7, 2020, Employer knew, as shown by a same-dated letter, that Employee's residence address was "**** W. 84th Ave., Unit A, Anchorage, AK 99502-5210." The adjuster's journal entry on July 14, 2020, showed she knew Employee had a PO Box in Anchorage. On September 14 and 30, 2020, Employee emailed the adjuster and said she had left Alaska and her new mailing address was, "16-*** Keaau-Pahoa Rd., Suite ***-269, Keaau, HI 96749." On January 11 and 12, 2021, Employee emailed the adjuster and said she was in Hawaii and wanted tax forms sent to the same Keaau address, above. On January 12, 2021, the adjuster responded to Employee's emails and asked her for an "updated mailing address" when she got one.

On January 21, 2021, Employee gave the adjuster a forwarding address, "*** 89th Ave., N., St. Petersburg, FL 33702." On January 25, 2021, Employee emailed the adjuster from Florida and stated her address would soon change as she was staying with friends. On January 28, 2021, the adjuster again asked Employee to provide her a new address once it changed. On February 2 and 4, 2021, Employee emailed the adjuster from Florida to check on a missing benefit check, and advised that a person checking her mail in Hawaii had also received nothing. On February 10, 2021, the adjuster's journal stated the adjuster had updated Employee's address to the above St. Petersburg address. By February 12, 2021, the insurer had "**** N. Gandy Blvd., #21310 St. Petersburg, FL 33702" as Employee's mailing address. On March 1, 2021, a Division technician mailed Employee a letter regarding reemployment benefits to her Anchorage PO box address as well as to the N. Gandy Blvd. address in St. Petersburg. On March 3, 2021, an adjuster emailed Employee to state that the N. Gandy Blvd. address was the only address the adjuster had on file for Employee. On March 4, 2021, Employee completed and photographed forms for Dr. Pino's examination for an examination that occurred in "Jacksonville, Florida." On March 15, 2021, Employee filed a March 3, 2021 claim for benefits listing her temporary address on N. Gandy Blvd. in St. Petersburg, and her permanent "address" effective April 5, 2021, as "16-*** Keaau-Pahoa Rd., Suite ***-676, Keaau, HI 96749."

On March 22, 2021, Employee emailed the adjuster and said she was going back to Hawaii in April. On March 24, 2021, Employee emailed the adjuster and asked her to send any mail either to her email or to her address, "16-*** Keaau-Pahoa Rd., Suite ***-676, Keaau, HI 96749." On March 25, 2021, the adjuster emailed Employee and said the adjuster would update her address as requested. By July 13, 2021, Employee was still residing in Hawaii as reflected by her physical therapy notes. On August 4, 2021, Eklund filed a claim on Employee's behalf and listed her address as "16-*** Keaau-Pahoa Rd., Suite ***-676, Keaau, HI 96749." Employee's next seven subsequent claims all listed her address as "16-*** Keaau-Pahoa Rd., Suite ***-676, Keaau, HI 96749." On May 17, 2022, Employee testified under oath at her deposition that she moved to Hawaii on April 4, 2021, and since that date she had not lived anywhere other than the "Big Island." Lastly, on September 13, 2024, Bredesen sent opposing counsel the above-referenced letter with specific dates when Employee resided in each state. *Tolbert*. This shifted the burden to Employer to produce substantial evidence to the contrary. *Huit*.

Even without regard to credibility, Employer provided no evidence proving or even suggesting that Employee did not reside in the states or cities in which she said she did during the applicable periods. Thus, Employer failed to rebut the raised presumption on this point, and Employee prevails on this issue solely on the raised but unrebutted presumption. *Vue*.

Even had Employer somehow rebutted the raised presumption on the issue of where Employee was physically residing during the applicable periods, a preponderance of the evidence in the entire record as a whole demonstrates that she was where she said she was in Bredesen's September 13, 2024 letter. The dates correlate with medical and RBA records, previous communications Employee had with the adjuster and with documents the adjuster and the Division sent her. Since her injury, Employee has lived in Anchorage, Hawaii, St. Petersburg Florida, and lastly in Hawaii since April 4, 2021. The parties agree Employee would be entitled to, and subject to, a COLA. The same evidence that raised the presumption also preponderates in her favor. *Miller*; *Saxton*. Based on this analysis, her request will be granted and Employer will be directed to calculate the COLA and pay or adjust TTD payments in accordance with §.175(b) as construed by any applicable precedent. This panel has no authority over constitutional challenges. Employee's COLA increase will be capped under §.175(a), (b)(5) and 8 AAC 45.138(d).

2) Shall Employer's request for an SSD offset be granted?

The facts related to this issue are undisputed: Employer has paid Employee TTD benefits under §.185 from July 3, 2020 and continuing. Employee's weekly TTD rate is $721.06. She applied for and was ultimately awarded SSD benefits, retroactively and continuing. On May 13, 2024, the SSA sent Employee a letter advising her that she was entitled to monthly SSD benefits beginning May 2021. Her initial entitlement was $1,718 per month. The SSA found she became disabled under its rules on July 7, 2020. The SSA paid Employee $65,742, less an amount withheld for her attorney's fees, in retroactive SSD benefits covering the period from May 2021 through March 2024. SSA continues to pay her increased, ongoing monthly SSD benefits.

Bredesen's hearing brief did not address the SSD offset issue. Employee's brief defended against Employer's SSD offset petition by first stating her requested dismissal sanction striking all "defenses" resolves this issue. Second, she argued that the SSD offset issue should be held in abeyance until all discovery from Employer is provided because that discovery may strengthen her defenses against the SSD offset. She did not explain how. Lastly, without explanation, Employee contended it would be improper to order a retroactive SSD offset in this case. At hearing, Employee further argued that federal law preempts state law on the offset issue and allows only the SSA to take an offset for Employee's workers' compensation benefits.

Employer's brief contended that it first learned on September 13, 2024, that Employee had recently been awarded SSD benefits, effective May 13, 2024. It filed an SSD offset petition on September 26, 2024, under AS 23.30.225(b) and 8 AAC 45.225(b). Employer contended it is entitled to a retroactive and ongoing SSD benefit offset against all indemnity payments.

Employee's position on federal preemption is not well taken. Both federal and state law allow for offsets to account for the other systems' payments. However, the SSA issues POMS. Applicable to the instant matter is POMS DI 52120.010(B)(1), which in regard to Alaska states, "Reverse jurisdiction applies. Do not impose offset." In other words, these instructions to SSA staff advise them not to apply the SSA offset because Alaska has a reverse offset provision. *Green*. It is not clear from Employee's SSA paperwork if the SSA took its offset; it appears it did not because the award letter does not mention it. If not, then Employee has been significantly overcompensated

with TTD benefits. If the SSA has taken its offset, and the retroactive payment she received was reduced to consider her receipt of concurrent workers' compensation benefits, then Employee has a remedy. If the SSA has taken its offset, it may have taken too much, and if so Employee will be directed to send this decision to the SSA for an adjustment and a refund. *Green*.

A. The offset.

AS 23.30.225(b) states that when periodic disability benefits are payable to an employee, weekly disability benefits payable under the Act "shall be offset" by an amount by which the sum of "(1) weekly benefits to which the employee is entitled" as SSD benefits, and "(2) weekly disability benefits to which the employee would otherwise be entitled" under the Act, "exceeds 80 percent of the employee's average weekly wages at the time of injury." *Shirley*.

Regulation 8 AAC 45.225(b) states an "employer may reduce an Employee's weekly compensation" under AS 23.30.225(b), and specifies how this is calculated. First, Employer must obtain the SSA's award letter showing (A) Employee is being paid SSD benefits; (B) the disability for which the benefits are paid; (C) the amount, month, and year of the Employee's initial entitlement; and (D) amount, month and year of each dependent's initial entitlement. Employer obtained the SSA's May 13, 2024 Notice of Award letter, showing Employee is being paid SSD benefits, satisfying (A). The parties appear to agree that (B), the disability for which the SSD benefits are being paid, includes disability caused by her June 30, 2020 work injury. Satisfying (C), the award letter shows her initial SSD entitlement was $1,718 per month, she became disabled under SSA rules on July 7, 2020, and was entitled to SSD benefits beginning May 2021. And (D), there is no indication Employee has any dependents.

Second, Employer must compute the reduction using Employee's initial entitlement. On July 15, 2025, Employer filed and served its worksheet detailing its SSD offset calculations. Employer correctly used Employee's initial SSD entitlement in its calculation and its other calculations also appear to be correct. Employee did not object or provide her own calculations.

Third, Employer had to file and serve a petition requesting the panel to determine that the SSA was paying SSD benefits as a result of Employee's work injury. It had to include with its petition

its calculations and a copy of the SSA Notice of Award letter. Employer filed and served its September 26, 2024 petition for an SSD offset. However, it failed to attach the Notice of Award letter or its calculations. Nevertheless, the Notice of Award letter is in Employee's agency file numerous times, it came from Employee and Employer subsequently presented its SSD offset calculations. In the interest of providing quick, efficient and fair services in a summary and simple manner, this decision will modify this procedural requirement and Employer's failure to attach this material to its petition, under 8 AAC 45.195, because the parties undoubtedly discussed this issue prior to hearing, likely during mediation, and Employee has not objected to Employer's calculations or provided her own. AS 23.30.001(1); AS 23.30.005(h).

Fourth, Employer had to file an ARH on its petition. The record does not show that Employer filed an ARH on the petition. However, the designee at a prehearing conference added this as a hearing issue, which was within his discretion. 8 AAC 45.065(a)(1), (15).

Lastly, after this hearing and if this decision grants the SSD offset reduction, Employer must complete a Compensation Report form showing the reduction, file it and serve it on Employee. Employee's last-minute attempt to hold Employer's SSD offset petition in abeyance pending discovery is not well taken, as she did not explain how any additional discovery could or would change the result for an SSD offset. The relevant facts are not disputed.
The arithmetic for calculating the SSD offset is fairly straightforward:

1	Employee's Gross Weekly Earnings (GWE)	$1,117.59
2	Employee's Weekly TTD Rate	$721.06
3	Employee's Initial Monthly SSD Benefit	$1,718.00
4	Employee's weekly SSD benefits (#3 x 12 months/ 52 weeks) = ($1,718.00 x 12 = $20,616 / 52 = $396.46)	$396.46
5	Employee's combined weekly SSD & TTD (#2+ #4) = ($721.06 + $396.46 = $1,117.52)	$1,117.52
6	Employee's maximum combined weekly benefit (80% of GWE) (#1 x .8) = ($1,117.59 x .8 = $894.07)	$894.07
7	Employee's weekly offset (combined weekly SSD + TTD rate - her maximum combined weekly benefit (#5 - #6) = ($1,117.52 - $894.07 = $223.45)	$223.45
8	**Employee's offset weekly TTD rate (current weekly TTD rate - weekly offset) (#2 - #7) = ($721.06 - $223.45 = $497.61)**	**$497.61**

Based on the above analysis, Employer's petition for an SSD offset to past and ongoing benefits will be granted. Employer is entitled to offset Employee's past and ongoing TTD benefits by $223.45, resulting in a $497.61 TTD rate applicable to all relevant periods.

B. The recoupment.

Given the above SSD offset, Employer has significantly overpaid Employee TTD benefits over the same time period for which she received SSD benefits. Employee suggests without explanation or citation to any legal authority that it would be "improper" for this decision to order a retroactive SSD offset against her TTD benefits. Employer has a right to recoup an overpayment to prevent Employee's double-recovery. The Act in §.155(j) provides for a statutory 20 percent recovery of overpayments from future benefits. Employer's July 15, 2025 worksheet for an SSD offset includes calculations based on the statutory 20 percent recoupment offset from ongoing disability benefits, which would take Employer 9.5 years to recoup the overpayment, versus a 50 percent offset, which would take approximately 3.5 years to recoup.

The Act gives this panel authority to allow Employer to withhold more than 20 percent of Employee's ongoing benefits in applicable cases. AS 23.30.155(j). The Court's reasoning in *Green* applies well in this instance. In *Green*, a panel allowed an employer in an undisputed PTD case, where PTD benefit payment was guaranteed in the future, to take a 100 percent offset from future benefits to recover an overpayment that was much lower than the overpayment in Employee's case. On appeal, the injured worker offered numerous arguments mostly contending that the 100 percent recoupment was too high or unfair. The Court rejected his arguments and noted that economics belied his position. The same is true here. Employee in essence received her future benefits from Employer through the SSA in a lump-sum. To the extent she has not already spent that money elsewhere, she would gain interest on it while only having to repay Employer for its overpayment of TTD benefits bi-weekly for years. *Green*.

Here, Employer seeks a 50 percent recoupment rate, which will still take nearly 3.5 years to recoup its overpayment. And that assumes Employee will be entitled to disability benefits for at least 3.5 more years. If she is ultimately entitled to no additional TTD benefits, Employer has no way to recover its overpayment. *Green*. Even though Employee has a pending PTD benefit claim, that

issue is not presently before this panel and will not be decided here. It remains to be seen whether she will be entitled to additional disability benefits long enough for Employer to recover its overpayment fully. Moreover, even after a substantial offset and a second offset to recover the overpayment, Employee will still receive her VA disability benefits, which in 2022, were $1,214.03 per month; the panel found no evidence this amount has been reduced since then. Employee will also continue to receive her SSD benefits and her offset TTD benefits for it so long as she remains entitled to them.

Given the above analysis, Employer's request for a 50 percent recoupment will be granted. In summary, Employer may reduce Employee's ongoing TTD benefit rate from $721.06 to $497.61 ($721.06 weekly TTD rate - $223.45 SSD offset = $497.61) to account for her ongoing receipt of SSD benefits. It may further reduce her ongoing TTD benefit rate from $497.61 to $248.81 ($497.61 offset weekly TTD rate x .5 recoupment rate = $248.81) to recover its overpayment. This results in a $248.81 ongoing TTD weekly rate. Once Employer has fully recovered its overpayment, it will increase Employee's weekly TTD rate, if she is still receiving TTD benefits, to $497.61, in accordance with this decision.

3) Shall Employee's February 6, 2025 and April 1, 2025 petitions be denied?

Employee's February 6, 2025 petition to enforce the designee's December 19, 2024 discovery order, and for sanctions, and its March 31, 2025 petition filed on April 1, 2025 (and referred to as her April 1, 2025 petition) for further sanctions, are her primary issues. The February 6, 2025 petition Bredesen filed contended that Employer failed to comply with the designee's December 19, 2024 discovery order; she requested unspecified sanctions. Employee's "April 1, 2025" petition asked the panel to consider "adverse inference" or other sanctions under AS 23.30.095, §.108(c), and §.155, 8 AAC 45.095 and "any other relief" it deems just.

Bredesen's July 9, 2025 brief did not address this issue, nor did he address it during his short attendance at hearing. Employee's brief promised to rely at "the evidence presented at hearing," but she did not offer any evidence, other than minimal testimony from Employee. Her brief relied on §.108(c) not in respect to discovery violations and sanctions but as support for her allegation that Employer has obstructed her right to receive compensation and medical care for her injuries.

But that issue is not before this panel at this hearing. The issues are governed by the June 17, 2025 Prehearing Conference Summary, which includes the two petitions to enforce discovery orders and provide for related sanctions. 8 AAC 45.065(c); 8 AAC 45.070(g).

Employee apparently also mistakenly believes that her claim for medical benefits and related transportation costs are issues for the instant hearing and decision. They are not because they were not listed as issues on the controlling June 17, 2024 Prehearing Conference Summary. An unfair controversion, a penalty and interest are similarly not decided here because they were not listed as issues for this hearing. Employee's request to require Employer to preauthorize medical treatment is also not an issue set for hearing. 8 AAC 45.065(c); 8 AAC 45.070(g).

Employee's October 22, 2024 brief that Bredesen filed in support of her September 27, 2024 petition to compel discovery laid the groundwork for the prehearing conference designee's December 19, 2024 discovery order. In that brief, Employee narrowed what she wanted: (1) identify the nearest point from adequate medical treatment for possible neck surgery and for TOS treatment, within 48 hours; (2) identify the factual basis for Employer's "controversion" of medical treatment at Vally Medical Center; (3) provide a current payment itemization; (4) state whether Employer has records not filed on a Medical Summary; and (5) provide records pertaining to an August 2024 EME trip where Employee was accompanied by Employer's agent. Those narrow issues will be addressed in order:

(1)*The nearest point for adequate medical care*: Employer at the November 14, 2024 prehearing conference identified "local" Hawaii surgeon Dr. Roh (sometimes spelled Rowe) as the nearest physician to treat Employee's neck. The context suggested that the parties at the prehearing conference understood where this physician was located. On December 23, 2024, in its "answer" to Employee's discovery letter, Employer stated UCLA would be the nearest place to treat Employee's TOS if her UCLA treating physician referred her to a local provider. Employer satisfied that discovery order. Employee should follow up with her physicians regarding these treatments. There is no basis for a sanction here. If in fact Hawaii surgeon Dr. Roh does not accept Alaska workers' compensation cases, that is not Employer's fault. She will have to have her

attending physician, whoever that now may be, refer her to the nearest provider for her cervical care. Employer is required to pay for medical services, not to arrange for them. *Richard*.

(2)*The factual basis for Employer's controversion of medical treatment at Vally Medical Center*: The panel found no relevant controversion in Employee's agency file after *Martino IV*. At the November 14, 2024 prehearing conference, Employer's representative stated that although in Employer's view "pre-authorization" was not legally required, it did not refuse to authorize treatment and Holdiman-Miller was going to inquire about what prevented Employee from receiving treatment she needed from her treating physician at Vally Medical. Thereafter, the record is replete with Hawaii treatment plan authorizations signed by Seever. Apparently, Employee contends that Employer has "controverted-in-fact" her medical care with this provider. While that issue is not before the panel at this hearing, and can be raised later when the remaining merits of her various claims are heard, Employer has responded to this discovery request and related order. In short, Employer's response was that it did not controvert medical treatment at Vally Medical. It is not clear what additional "factual basis" Employer could provide. There is no basis for a sanction here either.

(3)*Provide a current payment itemization*: Employer has repeatedly and consistently updated its payment itemizations. At hearing, this issue seems to have morphed to some extent under Graham's representation, which results in additional analysis, below.

(4)*State whether Employer has records not filed on a Medical Summary:* Employer has repeatedly stated it has no medical records that it has not filed on a Medical Summary. The only exception were some JBER records it obtained that Employer thought did not pertain to this case. It is not unusual for defense counsel to not file medical records on medical summaries that deal with personal, unrelated medical issues, so long as those records are sent to the worker or their counsel. On September 7, 2021, Stone sent all JBER records to Employee's attorney and advised that she had not put some on a Medical Summary. If Employee wants those other JBER records placed on medical summaries, she may file them herself on a Medical Summary. There was no evidence Employer failed to comply with this discovery order, assuming it was part of the designee's December 19, 2024 discovery order. No basis for a sanction exists here.

(5)*Provide records pertaining to an August 2024 EME trip where Employee was accompanied by Employer's agent*: The panel presumes this refers to Dr. Rosenbaum's September 17, 2024 EME. On December 23, 2024, Employer advised Employee that this information had been provided, other than privileged portions. The panel located documents from the concierge as set forth in the factual findings above. Employee has not identified any specific information not already provided in respect to this "August 2024 EME trip." The panel perceives no basis to order more on this point or for a discovery sanction.

However, as noted above, at hearing the discovery issues morphed and expand to some extent. Thus, more analysis is required to make sure this decision covers all possible discovery issues. Employee's July 9, 2025 hearing brief does address its allegation that Employer deliberately violated a discovery order and "refused to provide the discovery ordered." Employee's hearing brief is confusing and conclusory. It makes compelling arguments about why obeying discovery orders is critical and why equally-applied sanctions are important -- which no one disputes. But it fails to identify clearly what from the December 19, 2024 discovery order Employee claims Employer failed to provide. Employee states she has not been able to obtain full disclosure of all contact between Employer and its insurer and her treating physicians and EME doctors, all payment records or complete itemizations and "other relevant information."

Nevertheless, even though Employee's brief and argument at hearing did not enlighten the panel with adequate specificity as to what exactly Employer has failed to produce, she (1) requested that all further proceedings including her own petitions be held in abeyance until all allegedly "improperly withheld discovery" has been produced, and (2) jumped to her conclusion that, "Under these facts, dismissing defendant's defenses appears to be the most appropriate sanction." The panel is left to determine on its own what "these facts" are. This effort is akin to trying to put together a 5,000-piece jigsaw puzzle without the box in which it came with the picture showing what the completed puzzle is supposed to look like.

To be clear, Employee's current discovery petitions and sanction requests are not a "discovery dispute" that came before this panel "for a review of a determination" by the prehearing conference designee under §.108(c). By comparison and contrast, the designee at the December 19, 2024

prehearing conference entered his discovery order and no one sought review. Therefore, the "designee's discovery order" was and "is final." 8 AAC 45.065(a)(10), (d), (h). This panel has no authority to change, modify or overrule the December 19, 2024 discovery order. All this panel can do here is determine whether Employer "refuse[d] to comply" with the discovery order, and if so, it may "impose appropriate sanctions" including but not limited to dismissing Employer's "petition, or defense" under §.108(c). The designee ordered Employer to produce:

(1) . . . [A] supplement [to] the prior responses to [Employee's] informal discovery requests dated February 3, 2022: Employee's June 26, 2025 evidence filing did not help in determining whether Employer refused to comply with discovery order *(1)*. The 48 attached pages include little that supports her position. For example, Stone's September 7, 2021 letter to Eklund shows Employer provided 796 pages in response to Eklund's discovery request, which included the entire JBER medical file for Employee even though Stone said Employer had only filed records on medical summaries that related to her claim. Holdiman-Miller's 2025 response to a discovery request from Bredesen is evidence that Employer updated its responses. Leading up to the instant hearing, Employer's June Notices of Intent to Rely provided additional discovery.

In late June 2025, Seever sent records to Holdiman-Miller's office to supplement Employer's discovery responses. At hearing, Graham said he was "learning new things" through Seever's testimony that he "never heard before." He used that statement to justify an order compelling more discovery. However, Graham never specified what these "new things" were. Based on Graham's statement, Employee objected to admission of any evidence at hearing that Employer had previously redacted. He added that all redactions were supposedly justified by an attorney-client privilege, and the information to which Seever was testifying at hearing did not involve attorney-client privileged issues. Holdiman-Miller and Seever stated that Holdiman-Miller made the recent redactions, not Seever. Employer argued that unless Employee identified the redactions in question, it could not address her objections. Employer has a point; Employee's objections were vague; they did not help the panel understand her position.

Seever had not seen the redactions, but was aware that they would generally relate to the attorney-client privilege. She produced all claim notes in her file to her attorney but she does not know

what was ultimately produced or not produced. Neither does this panel. Seever's testimony on this point was credible. AS 23.30.122; *Smith*.

In short, after poring over this huge agency file, the panel found reference in the December 19, 2024 Prehearing Conference Summary to a May 8, 2024 visit Employee allegedly had with UCLA Health, which she contended had not been filed on a Medical Summary. This statement is the only reference to that alleged visit. A discovery order does not require a party to obtain information it does not have. Moreover, on December 19, 2024, Employer only stated it would attempt to locate and file any May 8, 2024 UCLA records as soon as possible. Producing it was not part of the designee's discovery order. If Employer does not have this record, nothing prevents Employee from requesting it from UCLA Health. But to the issue at hand, Employee has not explained how Employer not obtaining this record would violate the discovery order or justify dismissing Employer's defenses, especially since the record if it exists is available to any party who requests it with a valid release. There is no evidence Employer "refused to comply" under §.108(c), and no basis on which to sanction Employer under §.108(c).

Medical records Employer provided to its EME physician's pops up as a disputed issue in several places in the agency file. To the extent EME physicians discarded the records, that is their business practice and this panel has no jurisdiction to order them to do otherwise. If Employee contends that Employer must produce the exact medical records it provided to the EME physicians, that is a valid request. Again, this panel cannot overrule the designee's discovery order, under §.065(h). However, it is difficult to discern exactly what is included in the designee's order. Likewise, it is unclear as to Dr. Pino's EME how those records would be relevant at this point. 8 AAC 45.065(c); 8 AAC 45.070(g). But since Employer did not appeal the designee's discovery order, and the exact medical records Employer sent to Dr. Pino have been discussed as not yet being provided, and the panel found no evidence in the agency file that they were, Employer will be ordered to provide to Employee a copy of the exact records it provided to Dr. Pino.

Likewise, although Drs. Rosenbaum and Bell's reports are currently inadmissible as evidence because Employee asserted her right to cross-examine them, the panel cannot discern if Employer ever provided to Employee the exact medical records it sent to those EME physicians. To clarify,

there is a difference between randomly filing and serving Employee's medical records on medical summaries over several years, versus sending selected (*i.e.*, perhaps limited) medical records to an EME physician. In other words, were Employee to review every Medical Summary filed in this case, she would undoubtedly cast her eyes on all medical records Employer sent to its EME physicians, eventually. But this exercise would not identify the precise records Employer sent to the physicians for the EMEs.

Experience shows it would be highly unusual for an attorney not to keep a copy of everything it sent to a physician. *Rogers & Babler*. Consequently, since Employer did not appeal the designee's discovery order, and this issue has arisen in various documents in this file, Employer will also be ordered to provide an exact copy of medical records it sent to Drs. Rosenbaum and Bell. Again, and as an aside, although the panel did not rely on Drs. Rosenbaum's and Bell's EME reports in this decision, it noted that both reports listed the records each physician reviewed. Because it is not clear if records sent to the EMEs are included in the designee's order, Employer's failure to provide them in the form directed here does not form a basis to sanction it under §.108(c).

Employee also contended she has not been able to obtain full disclosure of all contact between Employer and its insurer vis-à-vis her treating physicians and EME doctors, or all payment records or complete itemizations. As to Employee's "contact" contention, Seever credibly stated she never contacted Employee's treating physicians directly, but only contacted their office staff for administrative purposes. Likewise, she credibly testified that she had no direct communication with Drs. Rosenbaum or Bell. AS 23.30.122; *Smith*. She may have been involved in scheduling. Employee did not explain how this information supported her position at hearing. She failed to present evidence or argument adequate to inform the panel what discovery was missing in this regard, or to form a basis to sanction Employer under §.108(c).

Employee's payment records contention is more nuanced. Seever affirmed that all payments to Employee's treating physicians are documented. She had no knowledge why any payments to Employee's medical providers on spreadsheets Seever provided, which her system generates, would be redacted and she would be surprised if any were. Yet, two payments to someone were in fact redacted on a medical payment spreadsheet.

Employer's Privilege Log II and June 18, 2025 "Medical Cost Summary List" are confusing at best. Seever also testified that no EME payments would appear on the same spreadsheet as payments to Employee's treating providers on the "Medical Cost Summary List." She said EME payments are kept in a different file, which she said Employee did not request. Nevertheless, on Privilege Log II, addressing document "001040," which is the "Medical Cost Summary List," Holdiman-Miller asserted attorney-client privilege on three entries: September 19, 2024, January 21, 2025 and April 3, 2025. It appears Holdiman-Miller neglected to redact the entry for "Eaze Medical Solutions" for services rendered between September 15, 2024 and September 19, 2024, totaling $12,810. The September 19, 2024 date corresponds to Dr. Rosenbaum's EME visit and report. Since Seever testified there should be no redactions on the "Medical Cost Summary List," there should be no reason for Holdiman-Miller to have redacted two entries, which apparently relate to January 21, 2025 and April 3, 2025. Therefore, given the designee's discovery order, Employer will be directed to reveal to Employee the redacted portions on Privilege Log II as reflected on the June 18, 2025 "Medical Cost Summary List."

Next, Seever could not recall if she retained ExamWorks as an EME company in this case. She clarified that the system-generated spreadsheets contained all payments for "medical care" but did not include payments to EME arrangers or providers. However, her testimony clarified that there was one 2021 payment to ExamWorks in Employee's file for $3,900. There was no further explanation regarding this payment, and it is not clear why Seever would not recall if she retained ExamWorks as an EME in this case, but nevertheless paid it $3,900. This issue relates to the documents Employee completed at Dr. Pino's office and photographed, discussed elsewhere in this decision. The forms reference ExamWorks, and list Dr. Pino as the examiner, but his March 4, 2021 EME report on its face does not identify any affiliation with ExamWorks.

When asked at hearing to clarify if payments made to EME providers were not included in the insurer's claim file system for this case, Seever did not directly answer that question, implied in the affirmative, but stated, "No, those were not requested. We provided all of the treatment and medical payment records." This may be a semantics issue; an EME physician does not provide "medical care" to the patient but simply provides an opinion to the party that hired that physician. But on February 14, 2025, Bredesen explicitly requested EME payment records. His request could

not have been much clearer. The Act states Employer "may not make more than one change in the employer's choice of a physician" without Employee's consent. AS 23.30.095(e). Without adequate discovery on this question, neither Employee nor this panel will ever know what role ExamWorks played, if any, in this case. There may well be a simple explanation.

Why is this relevant and important? Employer's choice of a §.095(e) physician is made by having "a physician . . . selected by the employer give an oral or written opinion and advice after examining. . . the employee's medical records, or an oral or written summary of the employee's medical records. . . ." 8 AAC 45.082(b)(3). In response to the designated chair's question at hearing, Seever testified that she had not consulted with any EME physician whose name does not appear in this agency file, and from whom she obtained an oral or written opinion. Likewise, she was not aware that any other person on Employer's side had done so. Hypothetically, if Employer or its agent (*i.e.*, adjuster, nurse case manager, attorney, paralegal, etc.) called a physician and gave an oral summary of Employee's facts, or digitally sent to a physician that information, or sent a physician her medical records and sought a medical opinion and obtained one, even if just orally, that could constitute Employer's change of physician under §.082(b)(3).

This regulation §.082(b)(3) was implemented in part to provide transparency and to prevent shadow "doctor-shopping." Under §§.095(e) and .082(b)(3) if Employer through its agent sought a medical opinion from an undisclosed physician, that undisclosed physician could legally constitute Employer's "choice of physician." If so, any subsequent "change" to additional, disclosed EME physicians could be unlawful. If in that case after hearing a panel found Employer made an unlawful change in physician in violation of §.095(e) that could result in the panel not considering opinions from any subsequent EME physicians in this case that violated §§.095(e) and §.082(c). Employer, in this hypothetical, would be left with the undisclosed EME physician's opinion as its most recent medical expert opinion. This may affect its reliance on disclosed EME physicians, which in turn could affect Employee's pending claims for PTD benefits, medical care, unfair or frivolous controversion, a penalty, interest, fees and costs.

Given the above analysis, Seever's testimony regarding ExamWorks, its role in this case and her $3,900 payment to it is confusing. Seever's statement that she would be "surprised" if a medical

payment was redacted on a payment spreadsheet, further raises suspicion as to why two entries were, in fact, redacted. Moreover, on January 30, 2023, Stone wrote to Bredesen in response to his December 29, 2022 informal discovery requests. In response to his request (4) for names, addresses, and phone numbers for all physicians Stone or her clients had contacted regarding Employee, Stone advised Bredesen that all medical records had been filed and served on medical summaries. But Stone did not address Bredesen's request for names, addresses and phone numbers of any physicians Stone or her client "contacted" in Employee's case. A hypothetical "shadow" medical expert would fall into this "contacted" category. This may be where Employee is heading with this request. Therefore, Employer will be directed to disclose the names, addresses and phone numbers for any physician it or its agents contacted for an opinion about Employee.

Employee also requested payment dates for payments shown on Employer's spreadsheet. As far as the panel can determine, while Employer provided updated payment spreadsheets, none of those disclose the payment dates to the various providers. Again, though relevance of this information is unclear, since Employer did not appeal from the designee's discovery order, Employer will be directed to divulge to Employee payment dates, amounts and providers paid in a comprehensive payment spreadsheet showing payments to her treating providers.

If Employee wanted to request EME payments, she would have had to ask for "an Expense Payment History," which Seever testified would include significant redactions because that part of her system also includes legal costs. It is unclear why Employee's request for, "A payment itemization for all payments made on this claim," would not be understood by a reasonable person to include payments made to an EME physician. Likewise, as noted above, Bredesen expressly requested payment information to EME physicians. It is not clear if Bredesen's request was passed on to Seever. As Seever reviewed her expense page live at the hearing, she testified that any payment made to ExamWorks would not show up in it, because ExamWorks "bulk bills." If requested, Seever would contact ExamWorks for that information. If Employee wants to know how much Employer paid to its EME physicians, she may request the "Expense Payment History" report. There is no basis here for sanctions against Employer or its insurer, as Seever apparently misunderstood Employee's request was limited to medical providers, not EMEs, or she was unaware that Bredesen had made an explicit request for payments to EMEs.

Seever could not recall the nurse case manager's name. Holdiman-Miller stated that Paradigm was the nurse case manager company and Bernie Farrell was the nurse case manager. Seever agreed and testified that Paradigm also bulk-bills so payments made to it also did not appear on the requested discovery. Employer provided Farrell's documents; if Employee wants to know how much Employer paid Farrell, she can request the "Expense Payment History." There is no evidence supporting an argument that any non-privileged information is lacking. There is no evidence Employer violated the discovery order here and no basis for sanctions.

On re-direct, Seever testified that if Employee had questions about communications regarding Employee's pharmacy card, she would have to ask Optum, the company that sent the card out. Seever only recommended the card, and Optum sent it out. Seever's credible testimony on this point demonstrates that Employer and its agents have no further information to offer regarding the pharmacy card. AS 23.30.122; *Smith*. There is no basis for sanctions here.

On February 14, 2025, Bredesen asserted that "several thousand pages of documents" had been withheld without any basis or timely privilege declared. He further argued that the privilege log stopped in September 2021. It is unclear why Bredesen believed "thousands" of pages had been withheld. Employee presented no evidence of that. Employer has now updated and provided Employee with Privilege Log II. Thus, it has not refused to comply with the designee's order, and there is no basis here for sanctioning Employer either.

(2)*A payment itemization for all payments made on this claim:* This has been addressed in part, above. Employer repeatedly updated its payment spreadsheets. Seever testified that her system generates these spreadsheets. At this point in Seever's hearing testimony, Employee objected under §.054(d) on grounds that Employer could not present at hearing evidence that it did not produce as directed. Graham stated that he had looked at the prior "six months of adjuster's notes" and many were redacted. That statement confirms Graham had the last six months of the adjuster's notes. The fact they were redacted does not suggest a discovery order violation. The evidence also shows that Employer provided Privilege Log II on June 18, 2025. Because some notes were redacted, Employee contended she could not specify what discovery was missing. With one

exception, Employee failed to convince the panel why she suspected discovery was still missing. The exception is redactions on the June 18, 2025 "Medical Cost Summary List."

(3)Please explain why the following medical studies and/or treatments, requested by Vally Medical, have not been authorized:

> a. Routine follow-up visit with her physician. I note that the provider indicated that the adjuster would only authorize a follow-up after the cervical MRI. This meant that Ms. Martino was unable to get her prescriptions refilled prior to the EME trip to Oregon.
> b. Thoracic MRI
> c. Shoulder MRI
> d. Acupuncture therapy
> e. Massage therapy
> f.Physical therapy

This request is a variation of the original request Employee made for the "factual basis" underpinning Employer's alleged "controversion" of this same treatment. The discussion from *(2)* on page 69 above, is incorporated here by reference.

(5) Have medical records arrived for Ms. Martino's April 25-27 trip? If so, when were they received? Please also file the records on an appropriate Medical Summary: Since this issue was brought up at the December 19, 2024 prehearing conference, the panel presumes that the "April 25-27 trip" refers to 2024. On December 23, 2024, Employer filed and served a Medical Summary on which it attached 14 pages from UCLA Health where Employee was treating for her work injury. It appears Employer filed these medical records on a Medical Summary, and this discovery order issue is now resolved. There is no indication Employer "refused to comply" with this part of the designee's December 19, 2024 discovery order under §.108(c). There is no reason on this issue to sanction Employer.

(7) Which physician does Employer/Insurer consider to be the nearest point [with] adequate services to treat her TOS condition: On December 23, 2024, in response Employer stated:

> The employer previously paid for the referred UCLA testing, treatment, and travel. If the locally designated physician locates a local TOS provider the local referral would be the nearest.

Employer cannot "select" Employee's physician without risking that it will run afoul of §.095(e) and regulation §082(b)(3) once Employee sees that physician and the physician gives an "opinion and advice" after examining her. There is no evidence Employer "refused to comply" with this part of the designee's December 19, 2024 discovery order. Its response was adequate. There is no basis on this issue to sanction Employer.

(8) Please provide copies of all communications regarding the recent EME appointment and the appoint that had been scheduled prior to it. This should encompass all communications in any form, electronic, paper, etc. It should encompass communications with the EME physician himself, as well as any company that may have facilitated the appointment (i.e., ExamWorks, etc.). This request also encompasses all communications by any person connected with claim, including the employer, insurer, your firm, etc. finally, it encompasses all communications with the individual who accompanied Ms. Martino during the trip, as well as the company she worked for: Seever's hearing testimony while addressing mostly irrelevant issues, was helpful on this issue to some extent. She testified that the insurer's claim note system documented all contacts with anyone in respect to this case, and after 24 hours, the entries could not be changed or deleted. Seever credibly testified that she has had no contact with Employee's attending physicians and only contacted their office staff regarding billing or to obtain records. Phone calls and emails are also dropped into the file. Since *Martino IV* issued, Seever had no direct conversations with medical providers. She discussed administrative issues with medical staff, but not physicians. Seever had no discussion with physicians regarding treatment. Seever further testified she had no contact with Employee's physicians or with EME physicians Bell or Rosenbaum. She may have had some contact with EME offices for scheduling. AS 23.30.122; *Smith*.

Employee provided no evidence suggesting that any other person on Employer's side had any contact with EME physicians, or that there is any additional evidence from the concierge who traveled with Employee to Dr. Rosenbaum's visit that was not already produced. Employer responded to this discovery request. Without more, the panel cannot find that Employer violated the designee's December 19, 2024 discovery order. Without such a finding, it likewise cannot order any sanctions.

Lastly, Employee expressed concern that she could find no instance where an employer has ever been sanctioned for a discovery violation. Her research should have shown that employees who are sanctioned for discovery violations are given at least three opportunities to remedy their failure or refusal to provide discovery before litigating-ending sanctions are levied upon them. Here, so far as the panel can discern from this huge, convoluted file, Employer has ultimately complied with the designee's December 19, 2024 discovery order. If it fails to comply with the order set forth in this decision, Employee may again petition for sanctions. There is no justification in fact or in law to justify the ultimate sanction -- dismissing Employer's defenses -- under the facts as analyzed here. Thus, Employee's request for an order compelling additional discovery and for sanctions will be denied.

4) Shall Employee's February 27, 2025 petition to preserve evidence be denied?

On February 27, 2025, Employee represented but acting *pro se* filed a February 26, 2025 petition to preserve evidence "to prevent deletion or discarding." There was no further explanation. Employee's July 9, 2025 hearing brief did not address this petition. However, at hearing in closing argument, Employee said she wanted an order ensuring that evidence preservation occurs and continues to occur. She referenced intake forms she completed at Dr. Pino's EME that "was never produced." Employee conceded Employer's attorney Stone had checked with Dr. Pino's office and was told the form either never existed or was destroyed. She also said medical records Employer provided to Dr. Pino for review prior to his EME "were not available." It is not clear what she meant by this. If Employee was implying that Employer or its agents had destroyed evidence of the exact medical records Employer sent to Dr. Pino, she did not make that accusation clear at hearing. In any event, this decision will order Employer to produce the exact records it sent to its EME physicians.

Employee agreed that the panel has no authority over the EME provider or arranger, but has authority over employer. Employer contends Dr. Pino is "old news," and since *Martino IV* ruled in Employee's favor, his questionnaire, which it contends is not a medical record, is irrelevant. Moreover, Employee took pictures of the subject forms, so she actually has them.

Employee apparently seeks a blanket order simply requiring Employee and its agents to not destroy evidence. Since they have provided no evidence that Employer or its insurer has destroyed any evidence, it is not entirely clear why this decision should enter such an order. As Bredesen noted in his brief, 3 AAC 26.030 already requires the insurance company and its adjusters to retain and preserve evidence related to a claim. The "director" referred to in that regulation is the director of the Division of Insurance, not workers' compensation. This regulation provides this panel with no jurisdiction or authority to address Division of Insurance issues. Employee photographed the intake forms in question and filed them with the Division. Stone's admission after inquiring with the EME providers about the forms, demonstrated that someone not a party here destroyed them. As Employee stated, this panel has no jurisdiction to order EME providers or arrangers to not destroy evidence. Employee presented no evidence or convincing argument justifying a blanket order "preserving evidence." Her February 26, 2025 petition will be denied.

5) Shall Employee's March 25, 2025 petition for additional time to request a hearing on her January 25, 2022 claim be denied?

On January 25, 2022, Employee filed a claim including PTD benefits under §.180(a). On February 15, 2022, Employer controverted numerous claims including PTD benefits. It served this Controversion Notice by mail and email on Bredesen. Since the claim was emailed to Employee's attorney, there is no need to add three days additional time for mailing under §.060(b). Beginning counting from the day after the Controversion Notice was filed, February 16, 2022, Employee had two years from February 16, 2022, to request a hearing on her January 25, 2022 claim. That date was February 16, 2024, which was not a weekend or a legal holiday, under §.063(a).

On February 22, 2022, Employee filed an ARH on three specific benefits claimed in her January 25, 2022 claim, not including PTD benefits. On June 20, 2022, Employee filed another ARH on additional benefits, but again not on PTD benefits. However, on December 28, 2022, she filed an ARH on, among other things, her January 25, 2022 claim, and specifically on "(all benefits except PPI)." Thus, on December 28, 2022, Employee filed an ARH on her January 25, 2022 claim for PTD benefits. There is no evidence that Employee ever withdrew the PTD benefits claim or the December 28, 2022 ARH. There is no evidence that any other action or inaction rendered the December 28, 2022 ARH ineffective under §110(c). Therefore, effective December 28, 2022,

Employee had complied expressly with the §110(c) requirement to request a hearing on her January 25, 2022 claim for PTD benefits on or before February 16, 2024.

Similarly, on February 13, 2024, three days before the February 16, 2024 deadline, Employee filed and served another ARH on the following claim: "01/25/22 (PTD)." She again complied expressly with §.110(c). Additionally, on March 7, 2024, the parties appeared before a designee to discuss scheduling Employee's PTD benefit claim for hearing. Bredesen noted the PTD claim was "not yet ripe" because discovery was ongoing. The designee stated, "Holding Employee's 2/13/2024 ARH in abeyance." *Egemo*. There was no objection to the designee's action.

On May 16, 2023, the parties at a prehearing conference agreed to issues for a June 29, 2023 merits hearing. Even though two ARHs had been filed that included PTD benefits from the January 25, 2022 claim, PTD benefits were not identified on May 16, 2023, as an issue for the hearing resulting in *Martino IV*. On August 10, 2023, *Martino IV* decided all issues scheduled for hearing from Employee's January 25, 2022 claim. Absent unusual and extenuating circumstances, *Martino IV* could not decide issues not set for hearing. 8 AAC 45.065(c); 8 AAC 45.070(g).

On April 14, 2025, Employer responded to Employee's March 25, 2025 request for more time to request a hearing on her January 25, 2022 claim. It contended *Martino IV* decided issues from that claim on June 29, 2023, and resolved those issues in a final decision. Therefore, it contended *res judicata* prevented the parties from relitigating the same issues, and since all benefits awarded in the Board's decision continued to be paid, "the request for an extension is unwarranted and baseless." Employer is mistaken. *Martino IV* did not address the January 25, 2022 PTD benefits claim, because it was not set for hearing. PTD benefits are not barred by *res judicata*.

To summarize, first, Employee expressly, timely and well within the two-year deadline to request a hearing, requested a hearing twice on her PTD benefit claim. Her PTD benefit claim is not denied under §.110(c). Second, the PTD benefit claim was premature. Therefore, on March 7, 2024, long after Employee had already timely requested a hearing (twice), a designee held the February 13, 2024 ARH in abeyance, which was the correct decision pursuant to *Egemo*. Employee's timely-filed ARHs on her PTD benefit claim remain in abeyance until discovery is

completed and the PTD benefit claim is ripe for hearing. Thus, Employee's March 25, 2025 petition for more time to request a hearing will be denied as unnecessary.

6) Shall Employee's May 8, 2025 petition to accept Graham's limited appearance be granted?

On May 8, 2025, Employee acting *pro se* signed a pleading on Graham's pleading paper seeking an order accepting and approving Graham's limited entry of appearance. She cited several rules, statutes and regulations as support. Employer contends Graham's appearance does not comply with the law and is too vague. It argues that if additional benefits are awarded to Employee in the future, the limited appearances will cause difficulty apportioning attorney fees.

The Act addresses representation at workers' compensation hearings. Parties in these cases "may be represented by any person authorized in writing for that purpose." AS 23.30.110(d). Technical rules relating to evidence and witnesses typically do not apply in these proceedings. 8 AAC 45.120(e). There is a specific regulation regarding representation in cases arising under the Act. A person who wants to represent a party in a workers' compensation claim must serve a notice upon all parties. The "notice of appearance" must include "the representative's name, address, and phone number and must specify whether the representative is an attorney licensed to practice law within the State of Alaska." 8 AAC 45.178(a). If the representative is an attorney licensed to practice law in Alaska, nothing more is required.

Employer objects to Graham's limited entry of appearance. It points to difficulties apportioning attorney fees and what it perceives as having to pay more than one attorney at the same time. But Bredesen's attorney fees claim derives from work he already performed on Employee's behalf before he withdrew, and are ongoing attorney fees on benefits awarded in *Martino IV*. Moreover, neither the statute nor the applicable regulation limits an injured worker to having just one attorney; nothing prevents a party from having more than one attorney at the same time, although that is not the case here. Alaska law makes the singular "any person" in §.110(d) and "a person" in §178(a) include the plural "persons." AS 01.10.050. Graham is the only person currently representing Employee. Bredesen represents himself in his claim for attorney fees. If additional benefits

become due and owing, Bredesen and Graham will have to justify any claims they make for attorney fees and costs under AS 23.30.145(a) or (b) and Court precedent.

Employer's cited references to Civil Rules, which with minor exceptions do not apply here and to other rules are not persuasive. While a limited entry of appearance is uncommon, Employer has not pointed to any statute or regulation that prohibits Graham from making an explicit agreement with his client for limited representation. Finding no legal basis to rule otherwise, Employee's May 8, 2025 petition to accept Graham's limited appearance will be granted.

7) Shall Employee's May 22, 2025 petition to strike medical records that exceed her medical releases be denied?

Employee retains the following pending claims: PTD benefits (January 25, 2022 claim); an unfair or frivolous controversion (February 13, 2024 claim); attorney fees, costs, medical benefits and related transportation costs (March 15, 2024 and August 13, 2024 claims); a late-payment penalty, interest and an order requiring authorization for testing and treatment (September 13, 2024 claim); and a compensation rate adjustment (March 31, 2025 claim).

Employee's May 22, 2025 petition seeks an order striking " any records" from her file for which she did not sign a medical record release. She raises an allegation that Employee's medical providers exceeded the scope of releases she signed when they produced records to either her, her lawyers, or Employer and its lawyers. Unfortunately, this is a fairly common practice, and experience shows that notwithstanding a specifically limited release, medical providers' offices often produce a patient's entire medical record. *Rogers & Babler*. Employee does not specify the records for which she did not sign a release and it is not clear if all releases she signed have even been filed in her agency file. It is impossible for this panel to review every medical release Employee may have signed in this case and compare them to every medical record in her file. The designee at the June 17, 2025 prehearing conference suggested Employee provide a list of records she argues should be stricken. Employee did not take that advice.

Employee's May 22, 2025 petition is similar to an AS 23.30.108(d) petition seeking a protective order to "recover" medical records that had been provided but were "not related to the employee's

injury." However, that is not what she requested. Employee's petition on its face shows her disagreement lies with providers that allegedly released records exceeding the scope of her signed releases. It is not clear if Employee seeks to strike even relevant medical records that her care-givers provided notwithstanding the limitations of her releases, or if she insists on striking "any records" from her file that she believes are not related to her injury with Employer. Notably, on September 7, 2021, Stone sent Eklund all medical records obtained from JBER, but only those records related to Employee's claim had been filed with the Division on medical summaries. This action demonstrated that Employer could police itself; there is no reason why the parties cannot resolve this medical record issue without additional litigation.

Moreover, without further clarification or explanation from Employee, the panel cannot grant her May 22, 2025 petition. Four of Employee's pending claims address disability and medical benefits: January 25, 2022, March 15, 2024, April 13, 2024, and September 13, 2024. Employee's PTD benefit claim makes her entire health history more relevant than it is in a TTD benefit case, because preexisting medical conditions, and other work- and non-work-related events may be the substantial cause of any permanent and total disability she may suffer. This makes it difficult for a lay panel to discern what medical records may or may not be "related to the employee's injury" from a physician's or vocational specialist's viewpoint. 8 AAC 45.110(b).

The panel is unlikely to remove "relevant" medical records from Employee's agency file even if medical providers produced records that exceeded Employee's release. "Any relevant evidence is admissible if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions." 8 AAC 45.120(e). Any alleged faux pas on the providers' part is something Employee may have to address with the applicable providers in a different forum.

On the other hand, if Employee is seeking a protective order to "recover" medical records that are "not related to the employee's injury," she should produce a list specifically identifying the records that she alleges fit into this category and provide it to Employer, along with a petition for a protective order to recover records under §.108(d). A designee will address that petition at a

prehearing conference in accordance with routine petitions for protective orders. Employee's May 22, 2025 petition will be denied.

Lastly, Bredesen filed a claim for attorney fees and costs and joined Employee and Employer as parties to it. Thus, he is a party to this action. 8 AAC 45.040(a), (f)(1), (h)(1)-(2); 8 AAC 45.050(a), (b)(1); 8 AAC 45.110(a)(1). Employer is required to serve any documents it files with the Division on Bredesen with proof of service until he is no longer a party in this matter. 8 AAC 45.060(b), (c). If Employer fails to serve both Bredesen and Graham with proof of service the Division may reject it or a panel may in its discretion decline to consider the filed but unserved document. 8 AAC 45.020(d)(3), (12); 8 AAC 45.060(d).

CONCLUSIONS OF LAW

1) Employee's request for a COLA will be granted.
2) Employer's request for an SSD offset will be granted.
3) Employee's February 6, 2025 and "April 1, 2025" petitions will be denied in part and granted in part.
4) Employee's February 27, 2025 petition to preserve evidence will be denied.
5) Employee's March 25, 2025 petition for additional time to request a hearing on her January 25, 2022 claim will be denied.
6) Employee's May 8, 2025 petition to accept Graham's limited appearance will be granted.
7) Employee's May 22, 2025 petition to strike medical records that exceed her medical releases will be denied.

ORDER

1) Employee's request for a COLA is granted in accordance with this decision and order.
2) Employee's COLA may not exceed the weekly compensation rate that Employee would have received if she was residing in Alaska.
3) Employer's September 26, 2024 request for an SSD offset is granted in accordance with this decision and order. Employer is ordered to complete a Compensation Report form showing the reduction, file it and serve it on Employee.

4) If the SSA has taken an offset against TTD benefits, Employee is directed to send this decision to the SSA for an adjustment.

5) Employee's February 6, 2025 and April 1, 2025 discovery petitions are denied, except for the following discovery orders, which are granted and ordered to occur within 30 days:

a) Employer is ordered to provide to Employee a copy of the exact medical records it provided to Dr. Pino.

b) Employer is ordered to provide to Employee a copy of the exact medical records it sent to Drs. Rosenbaum and Bell.

c) Employer is ordered to reveal to Employee the redacted portions on Privilege Log II as reflected on the June 18, 2025 "Medical Cost Summary List."

d) Employer is ordered to disclose to Employee the names, addresses and phone numbers for any physician it or its agents contacted to obtain an opinion regarding her.

e) Employer is ordered to provide to Employee payment dates, amounts and providers paid in a comprehensive payment spreadsheet showing payments to her medical providers.

6) Employer's February 6, 2025 and "April 1, 2025" sanction petitions are denied.

7) Employee's February 27, 2025 petition to preserve evidence is denied.

8) Employee's March 25, 2025 petition for additional time to request a hearing on her January 25, 2022 claim is denied.

9) Employee's May 8, 2025 petition to accept Graham's limited appearances is granted.

10) Employee's May 22, 2025 petition to strike medical records that exceed her medical releases is denied.

Dated in Anchorage, Alaska on August 8, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Brad Austin, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accordance with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of Sabrina M. Martino, employee / claimant v. Alaska Asphalt Services, LLC, employer; The Ohio Casualty Insurance Company, insurer / defendants; Case No. 202007450; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on August 8, 2025.

/s/
Rochelle Comer, Workers' Compensation Technician